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Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

STUDY OF THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

For the President's Council on Integrity and Efficiency

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EXECUTIVE SUMMARY

PURPOSE

This study examines possible management problems at the National Archives and Records Administration (NARA), including the former Archivist's Inspector General (IG) selection, activities of the former IG, and disclosures of contract bid information by management.

BACKGROUND

On November 2, 1992, the Senate Committee on Governmental Affairs (Committee) issued a report entitled, "Serious Management Problems at the National Archives and Records Administration." The Committee reported that the former Archivist did not exercise due care in selecting the NARA Inspector General, the former IG had engaged in inappropriate activities in violation of the Inspector General Act, and NARA management gave sensitive information to a successful contractor in presolicitation discussions.

The Committee report recommended that the Archivist take action to address misconduct of the former Inspector General and other NARA officials. It also recommended that the President's Council on Integrity and Efficiency (PCIE) review misconduct of the former IG, and that the President of the United States review actions of the former Archivist. This study was requested by the former Archivist, through the Chair of the PCIE, to review the findings of the Committee report and make appropriate recommendations.

The Inspector General Act of 1978 (IG Act) created "independent and objective" Offices of Inspector General (OIGs) to promote economy, efficiency and effectiveness, and to prevent and detect fraud and abuse in their respective agencies. The intent of Congress was to improve the effectiveness of internal auditors and investigators by removing them from the supervision of the program managers they were responsible for scrutinizing, and transferring them to an independent office that could exercise no program responsibilities. With the IG Act Amendments of 1988, Congress extended these provisions to designated Federal entities, including NARA.

FINDINGS

The former Archivist did not exercise due care and diligence in selecting the Inspector General for NARA.

- The process was not designed to identify and select the best qualified candidate for the position.

- The environment surrounding the creation of the OIG and the selection of an Inspector General at NARA was not conducive to OIG independence.

The OIG at NARA did not function as an independent, objective reviewer of the agency as required by the IG Act.

- The former Inspector General inappropriately participated in program activities.

- The former Inspector General was not independent and frequently took direction from management.

- The former Inspector General inappropriately referred cases to management for investigation and disclosed the identity of the complainant in the process.

- The former Inspector General could not objectively or competently conduct or supervise investigations.

The NARA management disclosed sensitive information to Vance International, Inc. during a presolicitation meeting in 1987. However, the disclosures were not motivated by personal gain.

Neither the Federal Bureau of Investigation nor the PCIE investigated allegations of noncriminal misconduct by the former NARA Inspector General, since they did not have the authority to do so.

RECOMMENDATIONS

The Archivist should:

- clarify the role of the OIG by issuing policies and procedures emphasizing independence and confidentiality;

- review the actions of NARA management officials, including the former IG, for possible Standard of Conduct and IG Act violations; and

- structure procurement responsibilities to assure that a top NARA management official is knowledgeable and trained in the provisions of the Federal Acquisition Regulations and to guard against officials having authority over major procurements in their own program areas.

No further time or effort should be spent investigating activities in connection with the 1987 Vance security guard procurement.

The NARA Inspector General should:

- take steps to ensure that audit and investigative functions fully comply with the IG Act and Office of Management and Budget (OMB) guidance for Designated Federal Entity (DFE) IGs, including developing an OIG policies and procedures manual and training investigative staff on all provisions of Federal law enforcement.

The Office of Management and Budget, Management Integrity Branch should:

- continue to pursue an administrative mechanism for the PCIE to investigate allegations of noncriminal misconduct.

The Executive Council on Integrity and Efficiency should:

- work with OMB, the Senate Governmental Affairs Committee, and House Government Operations Committee to develop a training package for heads of Federal entities and Federal entity IGs.

More recommendations are contained in the body of the report beginning at page 27.

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INTRODUCTION

PURPOSE

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BACKGROUND

On November 2, 1992, the Senate Committee on Governmental Affairs (Committee) issued a report entitled, "Serious Management Problems at the National Archives and Records Administration," that concluded "...the management of the National Archives and Records Administration has...reflected a pattern of expedience and control which has been regularly substituted for sound management."[1] The Archivist of the United States (Archivist) is the agency head of NARA.

Specifically, the Committee found as follows:

- The former Archivist did not exercise due care and diligence in selecting the Inspector General for NARA.
- The former NARA Inspector General engaged in inappropriate activities.
- The NARA management disclosed sensitive bid and other inside information to a single successful contractor during presolicitation discussions and meetings. Neither the Federal Bureau of Investigation (FBI) nor the President's Council on Integrity and Efficiency (PCIE) adequately pursued this wrongdoing, even though they knew it had been alleged.
- The NARA management omitted and destroyed records in response to the Senate Committee's request.

The Committee recommended that the Archivist take prompt action to address misconduct by the former Inspector General and other agency officials. It also recommended that the PCIE investigate wrongdoing by the former Inspector General and "adopt standards for best practices such as those included in the *Inspectors General In Designated Federal Entities: Key Statutory Provisions And Implementing Guidance*."[2]

Finally, the report recommended that the President of the United States review actions of the former Archivist around the selection and supervision of the former Inspector General, as well as other improper, and possibly illegal, activities within NARA.

This study was requested by the former Archivist, Don Wilson, in a memorandum to the Chair of the PCIE dated November 23, 1992. (Exhibit 1) He asked that an independent fact finding study be commissioned to review and evaluate the merits of the Committee report. He also asked that recommendations be made as to actions that should be taken wherever problems were found. In response, the Chair of the PCIE asked the PCIE to work with Wilson. (Exhibit 2) The Department of Health and Human Services (HHS), Office of Inspector General (OIG), agreed to conduct this study on behalf of the PCIE and Wilson. (Exhibit 3)

Our study addresses all findings and recommendations in the Committee report, except those relating to NARA management's omitting and destroying records. In response to the Committee's request, NARA gave them the selection file for the NARA IG position. The NARA staff acknowledged that they destroyed a draft letter from the file before they gave it to the Committee. We did not address either the ethical or the criminal implications of this activity since the Department of Justice is conducting a separate inquiry into these allegations.[3]

METHODOLOGY

The HHS OIG inspection team was led by the Deputy IG for Evaluation and Inspections and consisted of two analysts and one criminal investigator. The team reviewed documentation supporting the Committee report, as well as internal NARA correspondence and materials. More than 40 interviews were conducted. Most were with NARA management, staff and former employees, including the Archivist, the Deputy Archivist, the Assistant Archivist for Management and Administration, NARA General Counsel, and Office of Inspector General staff. (Interviewees are listed at appendix A and a NARA organization chart is shown at appendix B.) By advice of his counsel, the former NARA Inspector General would not answer questions without being given immunity from criminal prosecution. Other Federal agencies that had conducted studies and/or investigations of these and related issues were contacted. (They are listed and briefly described at appendix C.) To the extent possible, records were reviewed and individuals were contacted to clarify and provide additional details. The HHS Office of General Counsel, Office of the Assistant Secretary of Personnel Administration, Office of Audit Services, and Procurement Office provided the team with legal and technical advice.

REPORT

This report presents (1) a detailed account of each finding with supporting evidence for each, and (2) recommendations for the Archivist, NARA IG, Office of Management and Budget (OMB), and the Executive Council on Integrity and Efficiency (ECIE).

FINDINGS

The Inspector General Act of 1978 (Pub.L. 95-452, as amended by Pub.L. 100-504, October 18, 1988) 5 U.S.C. App.3, §8E(c) established OIGs in a number of Federal departments. The purpose of the Act was "to create independent and objective units" to conduct audits and investigations relating to programs of the respective agencies, and "to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations." (IG Act, §2).

The concept of statutory OIGs developed in response to Congress' perception that existing audit and investigative units were not adequate to address the "epidemic" of fraud, waste, and abuse in federally funded programs. Their failing was attributable both to a "crippling lack of resources," and to the fact that they reported to, and were supervised, by the very officials whose programs they were to audit and investigate.[4]

The IG Act sought to remove this "inherent conflict of interest" by consolidating audit and investigative resources in each agency under a single, independent official, the Inspector General. The IG's independence is safeguarded in a variety of ways. The IG Act (at §8E(b)) states, "Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity." This is different from Presidentially Appointed IGs (PAS IGs) who may "...report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head..." Moreover, the IG has sole discretion to determine what investigations and audits his or her office will conduct (id. §6(a)(3)) -- not even the agency head may "...prevent or prohibit the Inspector General from initiating, carrying out or completing..." any audit or investigation (id. §3(a)).

The OIG's objectivity was also specifically protected by Congress' refusal to assign to the IG any policy duties: "[T]he legislation gives the Inspector General no conflicting policy responsibilities which could divert his attention or divide his time..." (S. Rep. No. 1071 at 7). Similarly, Congress prohibited the head of the agency from transferring program operating responsibilities to the Inspector General (IG Act, §9).

In summary, the Congress created Inspectors General to enhance the effectiveness of internal auditors and investigators by removing these officials from the supervision of the program managers who they were responsible for scrutinizing, and transferring them to an independent office that could exercise no program responsibilities. In extending the majority of provisions of the IG Act to over 30 designated Federal entities in 1988, Congress ensured that the new IGs would also enjoy the above-described independence (IG Act, §8E).

THE ARCHIVIST DID NOT EXERCISE DUE CARE AND DILIGENCE IN SELECTING THE INSPECTOR GENERAL FOR THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.

By law, "...the Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity (IG Act, §8E(c))." Don Wilson, the Archivist, indicated that he selected Lawrence Oberg as the NARA IG, even though the Deputy Archivist, Claudine Weiher, signed the selection form.[5] Technically, neither Wilson nor Weiher violated the statute. However, the process was flawed and the environment in which the Office of Inspector General was created at NARA was not conducive to the independence required by the IG Act.

The process used to select an Inspector General was not designed to identify and select the best qualified candidate for the position.

Generally, vacancy announcements for positions at the level of Inspector General are announced nationwide and they are open for 14 to 30 days in an attempt to get the best possible pool of candidates. The NARA announcement for an IG was restricted to the Washington, DC area and open for only 12 days. (Exhibit 4) While this does not violate the IG Act, it limits the agency's ability to obtain a larger pool of qualified candidates.

The NARA announced three ranking factors to identify the most important qualities to be considered in filling the job. They were the ability to conduct or direct investigations; the ability to plan, implement, and conduct an internal audit program; and skill in written and oral communication. (Exhibit 4) These factors are consistent with IG responsibilities. Of the 19 qualified applicants, we believe Oberg ranked among those with the least audit and/or investigative experience. Both Wilson and Weiher were asked separately why Oberg was selected. They indicated that other applicants were not outstanding and Oberg had knowledge of the NARA programs.[6] If knowledge of NARA programs was to be a ranking factor, it should have been stated in the vacancy announcement. This would have given other candidates the opportunity to address related experience or training that they did not include in their applications because they had no way of knowing that it was an important consideration in filling the position.

Oberg's application and the appraisal completed by James Megronigle, Assistant Archivist for Management and Administration, along with oral recommendations from Weiher, provided the basis for the selection.[1] We found Oberg's appraisal as completed by Megronigle to be misleading, if not false. It indicated that Oberg's

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[1] In our interview with Wilson on March 9, 1993, he indicated that he had no personal knowledge of Oberg and that he relied on his staff's assessment and advice in making the selection. The appraisal Megronigle completed was material because Wilson said he had no personal knowledge of Oberg's experience and qualifications and relied on senior staff advice in making his selection.

performance in investigations, internal audits, and written and oral communications was exceptional, and that Megronigle's knowledge was based on "on the job performance." (Exhibit 5) However, Oberg was not conducting internal audits or investigations during the time he worked for Megronigle.[7] Oberg's position description during the period he worked for Megronigle did not reflect these responsibilities. (Exhibit 10) George Henderson, who headed the NARA Audit and Compliance Unit, stated that Oberg never worked with him or his staff on NARA audits.[8]

Wilson made a selection from a list provided to him by Weiher of 19 qualified applicants.[9] A panel of persons knowledgeable about the duties of the IG position had not been convened to determine the best qualified candidates. This panel could have included other IGs or key IG officials. While convening such a panel is not a requirement, it is the practice at many agencies. Not only does it provide objectivity, it also reduces the list of people the selecting official must consider for the position. A smaller list allows closer scrutiny prior to selection.

Wilson selected the IG without interviewing any of the other 18 candidates.[10] Interviewing candidates is not an IG Act requirement, but it is a common practice among Federal agencies. According to Megronigle, management positions are frequently filled without interviewing candidates when the selection is within NARA.[11] Interviewing candidates provides at least three benefits. First, the selecting official has an opportunity to see and talk with the candidates. Second, the selecting official has an opportunity to learn about how other offices work. This is especially important for NARA, since many of the candidates had many years of OIG experience; and Wilson told us he did not have a good sense of what an OIG was to do or how it was to function.[12] Third, the selecting official has a better basis for comparing candidates.

Wilson selected the NARA IG without understanding his own or the IG's responsibilities under the IG Act.[13] In an interview with the HHS inspection team, he readily acknowledged giving insufficient care and diligence to selecting the Inspector General for NARA. He said that he reviewed all 19 applications and "None jumped out at him."[14] He selected Oberg, a NARA employee who at the time was Director of Administrative Services and worked for Megronigle.

The environment surrounding the creation of the OIG and the selection of an Inspector General at NARA was not conducive to OIG independence.

Wilson's management style was to delegate responsibility for internal operations to Weiher. He stated that he was especially uncomfortable with personnel and procurement matters. His interests were primarily with the Presidential Libraries and fund raising. He perceived the selection of an IG and the establishment of an OIG to be an internal matter, so he relied on Weiher's recommendation. Wilson said that he became involved with the selection of the IG at NARA simply because the Act said he must.[15] The IG Act requires that the agency head, rather than a subordinate official,

appoint the IG, because it recognizes an inherent "conflict of interest." The IG Act intends that IGs act "...as independent factgatherers, with no vested interest in policy, or in particular programs and operations...an IG...is authorized to review allegations of misconduct in the decision making process..."[16] The problem Wilson's management style presented was that he relied too heavily on Weiher's recommendation for his selection of the IG. This selection process laid the foundation for the ineffective OIG operation that followed.

The NARA management had been grappling with its own independent decision making authority. Prior to gaining its independence from the General Services Administration (GSA) in 1985, NARA relied on GSA's OIG for audits and investigations. When NARA became independent, it acquired, along with other staff, two investigators and three auditors. In 1986, the NARA Office of Management and Administration, headed by Megronigle, conducted a study showing that investigators were not needed at NARA.[17] The study was initiated because the investigators made assertions that "...the investigative staff should be independent of management."[18]

This NARA study also stated that "...our recommendations concerning how we believe NARA's investigatory activities should be carried out run counter to proposed legislation amending the Inspector General Act."[19] The result was that the two investigators were assigned to other duties and eventually left NARA.

In addition to the investigators' challenge, NARA's procurement staff was attempting to assert its independent contracting authority. Allegations that management was forcing procurement officials to take inappropriate action were beginning to surface. One of those complaints resulted in the FBI investigation of the Vance International security guard procurement discussed later in this report.

In 1989, when NARA was selecting an IG, Weiher and Megronigle were still grappling with issues around their legitimate authority in the areas of procurement and personnel. Therefore, the independence and objectivity that an agency head brings to the selection of another agency official who is to operate independently is extremely important. Wilson, by taking his responsibility to select the IG for NARA so lightly, permitted the selection in an environment that was not conducive to IG independence.

THE OIG AT NARA DID NOT FUNCTION AS AN INDEPENDENT, OBJECTIVE REVIEWER OF THE AGENCY AS REQUIRED BY THE IG ACT.

The IG Act at §8E(b) stipulates no "program operating responsibilities" shall be transferred to the OIG. Specific violations of the Act by the NARA IG and management center on the following issues: Oberg's trip to California to support the Reagan Presidential Library move; the numerous times Oberg compromised the independence of the OIG by soliciting and accepting investigative guidance from NARA management; and the breaches of complainant confidentiality that resulted from poor judgement practiced by Oberg as the Inspector General. The lack of

independence of the office, the poor judgement exercised by the IG, and the perception of these problems by NARA employees resulted in a lack of OIG effectiveness and the appearance that it was a "pawn" of NARA management.

The NARA IG inappropriately participated in program activities.

The IG Act prohibits the IG from engaging in program operating activities. As discussed above, such conflicting policy duties could compromise the IG's objectivity. Oberg had been heavily involved in Presidential Library moves in his previous position, including the move of the Reagan papers and artifacts from Washington to temporary storage in California. From March 26, 1991, to April 12, 1991, NARA staff moved papers and artifacts of the Ronald Reagan presidency from storage in Laguna to the Presidential Library. Oberg went to California and was there throughout the move. In response to the Committee report's finding that Oberg went to California to help with the move and engage in NARA program activities, Wilson had Christopher Runkel, an attorney on the NARA General Counsel staff, and Henry Leibowitz, Employee and Labor Relations Branch Chief, conduct an investigation to determine the nature of Oberg's activities while he was in California.

The NARA investigation and subsequent report into this matter found that Oberg "...acted as a member of the move team..." during the move.[20] The report also stated that Oberg "...assumed *de facto* responsibility for the completion of program tasks."[21] Oberg's activities included moving boxes and pallets, loading and unloading trucks, and moving pallets of materials with a forklift.[22] Oberg's management activities included assuming on-site responsibility for the shelving of unclassified material and preparing and loading of gift materials for shipment from Laguna to the Library.[23]

The findings of the NARA investigative report confirm that Oberg violated the IG Act by participating in program activities. The report concluded that Oberg had compromised his ability to conduct audits or investigations of the Reagan Library move because of his extensive involvement in the move itself.[24]

The NARA investigation found that Oberg's participation in the physical act of moving documents was far more extensive than his sworn characterization of his role in his deposition to the Senate Committee.[25] The NARA investigation's findings concerning the actions of Oberg during the trip and his "misleading" statements to the Senate Committee led to Wilson's December 23, 1992, letter to Oberg proposing to remove Oberg from the IG position and reduce him two grades.[26] As a result of negotiations with Oberg's attorney, NARA settled this matter.[27] Under the terms of the settlement, the NARA agreed to remove two adverse actions from Oberg's personnel file. One was a warning letter dated June 30, 1992, for using Government property for personal purposes, and the other is the December 23, 1992, letter. Oberg was also allowed to request removal from the IG position and a one grade reduction. The Archivist can take no additional administrative action against Oberg based on the issues addressed in this settlement.

In addition, NARA voluntarily undertook to reimburse Oberg's attorney in an amount exceeding $10,000.[28] When asked for the citation that grants the authority for payment of these fees, NARA cited 5 USC 7701(g)(1) which states, "...the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee...if the employee...is the prevailing party and the Board...determines that payment by the agency is warranted in the interest of justice..." It appears this section only authorizes payment of attorney fees for those cases that are appealed to the Merit System Protection Board (MSPB). The HHS Office of the Assistant Secretary for Personnel Administration verified that an agency can only pay attorney fees in administrative personnel matters in three circumstances: (1) MSPB appeal, (2) negotiated union agreement, or (3) formal EEO complaint settlement. Oberg's case does not fall into any of these three categories. The HHS Personnel Office further stated that there is case precedent for the approving official to make restitution when attorney fees were paid without appropriate authorization. (Exhibit 6)

The NARA IG was not independent and frequently took direction from management.

Section 8(E)(d) of the IG Act states, "The head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation..." The NARA IG lack of independence is evidenced by management's involvement in developing OIG procedures and its active role in deciding on investigative and audit strategies.

- *OIG procedures were drafted by NARA management and limited OIG independence.*

  The early draft procedures for the OIG are the clearest indication of the environment in which the NARA IG was conceived and in which the OIG had to operate in its early years.[2] These early procedures clearly demonstrate that NARA management challenged the OIG's independence from the beginning. In fact, the debate on the OIG's independent authority continued through much of 1991. The controversy focused on the authority of the OIG to independently, without direction from management, determine which audits to conduct. It was not until the final procedures were issued March 4, 1992 that they reflected the appropriate balance between the IG and management in relation to audit planning.

  When NARA established the OIG in April of 1989, management, not the OIG, drafted the initial procedures and functional statement. The functional statement (dated April 14, 1989)[29] and the procedures (earliest dated copies

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[2] In a memorandum dated September 1, 1989 (p. 5) from John Constance to the OIG, NARA states "...the Inspectors General established under the 1978 act have a greater degree of independence than those established under the 1988 amendments." In its review of the implementation of the IG Act Amendments at NARA, GAO indicated to NARA that this interpretation of the statute was incorrect.

are September 1989) clearly demonstrate that management expected the OIG to take direction from and report to management. The most egregious example is the draft procedures for developing the audit plan.[3] The draft procedures state in part "[the OIG][4] will prepare an annual audit plan for [the Archivist]...Three types of audits are included in the plan, those requested by [the Archivist], those suggested by NARA management officials and [the OIG] which are approved by [the Archivist], and those placed on the list by [the OIG] under its independent audit authority." Independent audit authority was defined as mandatory audits.[5] The procedures go on to say that "[the Archivist] reviews the draft audit plan, adds or deletes audits, as deemed appropriate, except those [the OIG] has placed on the list under its independent audit authority, and instructs [the OIG] to prepare a revised audit plan. The procedures further state that "...[the OIG] prepares the final audit plan based on [the Archivist's] instructions and [the OIG's] plans undertaken on its own authority. [The Archivist] distributes the plan...[The Archivist] can order a special audit at any time. Office heads and staff directors must obtain special approval from [the Archivist] for [the OIG] to conduct audits not identified in the annual audit plan."[30] (emphasis added)

While NARA has now corrected most of the problems represented by the above passages, the issue of the OIG's independence continued to be a problem through at least June of 1990. On November 22, 1989, Wilson met with Oberg and Debra Guentzel, former Deputy Inspector General, to discuss the General Accounting Office (GAO) audit of NARA's implementation of the IG Act. The GAO was concerned about audit procedures, "...documents containing questionable provisions...were prepared by the entity's policy staff and show that the entity head has considerable control over the IG's audit plan."[31] At the meeting, Wilson agreed that the IG "...has the decision authority on areas to audit and the priorities of audits."[32] Despite this

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[3] The second general standard for government auditing is independence. The GAO Government Auditing Standards state that both the audit organization and the individual auditor should be free from personal and external impairments to independence. The Standards go on to state that it is essential that knowledgeable third parties believe that they are independent (pp. 3-4 - 3-5). The HHS Office of Audit Services reviewed the initial procedures developed by NARA for audit planning and stated that the NARA OIG could not conduct an audit in compliance with the standard for independence given the nature of the NARA procedures.

[4] In quoting from the NARA administrative manual, we have used the actual office name rather than the code NARA uses to refer to offices in all its internal documents and correspondence. For example, "NG" is the NARA designation for the Office of Inspector General. Rather than use "NG", we are using "Office of Inspector General." We have indicated our substitutions by brackets[].

[5] Memorandum dated September 1, 1989, page 6, from John Constance to the OIG states "...[the OIG] submits 2 types of audits during the planning phase: those it will undertake under its own authority (mandatory inclusion), and those that may be needed (optional). [The Archivist] may exclude [the OIG's] optional audits from the annual audit plan, perhaps for such reasons as priority needs, without infringing on [the OIG's] autonomy."

agreement, Wilson wrote to Senator Glenn, Chairman of the Senate Committee on Governmental Affairs, in June 1990 indicating "...my only concern is that I too have the ability to direct the IG to carry out audits in areas where, in my judgment, the agency needs better internal controls and procedures." (Exhibit 7) Senator Glenn responded in a June 26, 1990, letter: "I believe it is contrary to the intent of the Inspector General Act for you or any other designated Federal entity head to possess the authority to 'direct' the IG to conduct audits. Such power over the IG's work has clear negative implications for the IG's independence." (Exhibit 8) Wilson told us he had asked Senator Glenn for clarification because of resistance from Megronigle and Weiher to giving independent authority to the OIG to select and prioritize its audit work.[33]

- *NARA management took an active role in deciding on investigative strategies and activities.*

As stated in the IG Act above, the Office of Inspector General must conduct independent audits and investigations. The NARA IG and management violated this provision of the Act in an investigation of Confederate currency allegedly stolen by a NARA employee.[34] During the entire course of this investigation, NARA management was involved in and dictated investigative decisions. The goal of the investigation became the pursuit of administrative actions (i.e., terminating the subject's employment with NARA).[35] This is in contrast to the normal sequence of pursuing criminal prosecution first with administrative actions being a secondary concern. The NARA program staff developed a list of interview questions to ask the subject of the investigation and gave the list to IG investigator Carl Salesky.[36] Without any assistance from the OIG investigator, program staff conducted interviews of several coin dealers who had purchased currency from the subject.[37] The subject's supervisor not only attended the OIG interrogation of the subject but participated in the interrogation.[6]

Furthermore, as a result of numerous meetings involving NARA management, IG personnel and NARA Office of General Counsel staff conducted two searches of the subject's desk.[38] These warrantless searches raise questions of compliance with the Fourth Amendment. Decisions to conduct such searches while there is an ongoing criminal investigation should be made in consultation

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[6] In the taped interrogation of the subject, the subject's supervisor participated in the questioning of the subject as well as in explaining Kalkine's rights. These rights are given to employees to guarantee no criminal prosecution based on information they provide. In advising the employee of his rights, the Government asserts its right to require the employee to explain his work related actions or face disciplinary action for failure to do so. The Quality Standards for Investigations issued by the PCIE states that the second general standard for investigative organizations is independence. It goes on to state that external factors such as (NARA management's) authority to overrule or to influence the extent and thoroughness of the investigative scope, how the investigation is conducted, who should be interviewed, what evidence should be obtained, and the appropriate content of the investigative report impair an agency's ability to conduct an independent investigation (pp. 5 - 6).

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- *The IG was supervised by and reported to the Deputy Archivist.*

The IG Act (at §8E(b)) states, "Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity." This is different from Presidentially Appointed (PAS) IGs who may "...report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head..." Wilson and Weiher both stated that Weiher rated all office heads and Oberg was an office head.[46] Weiher took an active role in the oversight of the IG office in general and Oberg in particular. Weiher rated Oberg's performance as the Inspector General for two of four rating periods (exhibit 11); met with him much more frequently than did Wilson[7]; and played an active role in the investigations and audits. These actions violate the requirements of the IG Act.

- *The IG inappropriately referred cases to management for investigation and disclosed the identity of the complainant in the process.*

Section 7(b) of the IG Act prohibits the IG from disclosing the identity of an employee-complainant without the consent of the employee, unless the disclosure is unavoidable during the course of the investigation. The IG violated this statute by referring information provided to the OIG to NARA management for investigation. In one example, the OIG received an allegation from a NARA Federal Records Center employee that another employee was improperly disclosing Internal Service Revenue (IRS) information. This is a possible violation of Section 7(b). The OIG referred this allegation to management for investigation along with the reporting employee's name, even though the employee had requested confidentiality. The complainant refused to cooperate when contacted by the NARA management team conducting the investigation.[47]

Section 7(c) of the IG Act states, "Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or

[7] A review of Weiher's and Wilson's calendars indicated that since becoming the IG, Oberg met with Weiher 19 times. Wilson met with Oberg four times; two were in December 1992 after the Senate report was issued. Oberg's calendars were not available for review. We were also told by several former and current IG employees that Oberg and Weiher met and talked frequently. A NARA employee who previously worked in the Office of the Archivist also stated that Oberg met frequently with Weiher, but rarely met with Wilson.

falsity." A NARA employee filed a "whistleblower" complaint with the OIG alleging that she had been retaliated against by her supervisor who was charging her with leave she had not taken. Upon receiving this complaint, Oberg referred the matter to the Office of Special Counsel which refused to investigate. He then referred the matter to NARA management and revealed the identity of the whistleblower. Our interview of Megronigle disclosed his belief that Oberg referred the matter to him with the understanding that a Time and Attendance problem should not be handled by the Office of Inspector General.[48] This, however, contradicted Oberg's actions when the OIG received another complaint concerning possible Time and Attendance abuse. In this instance, Oberg personally conducted a week-long surveillance of the subject and ordered his investigator to continue the surveillance for another week.[49] The planning of this surveillance and its results were communicated to NARA management.[50]

In both of these cases the same employee was involved; once as a whistleblower and once as the subject. This same employee had filed several EEO complaints against Oberg and other NARA officials. Oberg's actions in these matters may violate Section 7 of the IG Act which prohibits disclosing confidential information and taking reprisal on employees who do provide information. These actions also demonstrate Oberg's lack of judgment and lend credence to the statements made by Guentzel and former OIG auditors concerning the OIG's failure to protect the identity of complainants.

- *The OIG routinely gives the NARA personnel office access to IG files.*

The OIG opens its files for review by NARA Personnel Office employees during the course of that office's routine employee background checks.[51] The NARA Personnel Office routinely sends the IG office a list of employees being checked with the request that the OIG review its files to determine whether the names are on file. If the names are on file, either as a subject or as a witness, the OIG allows the Personnel Office access to all files in which the individual's name appears.[52] Assurances have been given that access is not allowed if the file is still open or if there has been any request for confidentiality on behalf of anyone listed in the file.[53] However, it is inappropriate for the OIG to allow anyone unfettered access to information contained in the OIG investigative file. For example, a file may contain information obtained through the grand jury process and any disclosure would be a violation of Rule 6(e) of the Federal Rules of Criminal Procedure. Another example pertains to files that may contain confidential information which should be protected from disclosure. Under the Privacy Act, disclosures can only be made in accordance with the statute and implementing regulations (5 U.S.C. 552a).

- *Until recently, NARA management had access to the phone numbers from which hotline calls were made.*

  Employee confidentiality was breached in the OIG hotline billing process. The bills for the hotline, including the telephone numbers of the individuals who called the hotline, went directly from the telephone carrier to NARA management. From there, the bill was segregated and sent to the IG office for payment. Again, this compromises the confidentiality of whistleblowers and other confidential informants in possible violation of section 7 of the IG Act. A memorandum from NARA management (exhibit 12) concerning this problem discloses that Oberg was aware of the problem and had done nothing to correct it.

- *The IG could not objectively or competently conduct or supervise investigations.*

  As outlined in §4(a)(1) of the IG Act, the IG must "... provide policy direction for and to conduct, supervise, and coordinate audits and investigations..." Oberg, as Inspector General did not act objectively, exhibited poor judgment, and demonstrated limited knowledge of appropriate investigative procedures. Specifically, Oberg, perhaps rightfully, recused himself from an investigation that involved a contract he had personally been involved with in his prior position as Director of Administration. After recusing himself, he referred the matter to the Office of Special Counsel and then, upon their refusal to investigate the matter, he closed the investigation. Upon his recusal, he gave the authority to investigate the matter to Guentzel but then failed to inform her that he had closed the investigation.[8]

  In other situations Oberg did not recuse himself from cases that involved employees who had ongoing discrimination complaints against him and other NARA management officials. Both Oberg and Brooks, the NARA General Counsel, stated that Oberg discussed with General Counsel staff whether or not he should recuse himself.[54] General Counsel staff would not give Oberg specific guidance on the question of recusal, but advised that generally

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[8] HHS review of NARA OIG Case File Number 91-009-NA showed that on March 22, 1990 the OIG received a letter alleging contracting improprieties. Oberg recused himself and turned the case over to Guentzel. Note in the file from Guentzel to Oberg dated August 24, 1990 responding to Oberg inquiry about status of the case indicating work is in progress. On November 28, 1990, two letters were received by the OIG - one requesting an investigation of a time and attendance issue; the other alleging violations of contracting laws and conflict of interest. On December 7, 1990, note from Oberg to Guentzel recusing himself from contracting issue, not the time and attendance issue. On December 17, 1990, Oberg referred both issues to Office of Special Counsel (OSC) even though he had recused himself 10 days earlier from one of them. On January 29, 1991, OSC returns both issues, refusing to investigate either. On February 8, 1991, Oberg administratively closes the contract case he had previously recused himself from. There is a note in the file dated March 20, 1991 from Oberg telling Guentzel to pursue the November 28, 1990 allegations, even though he had closed the case administratively on February 8.

speaking, Oberg did not need to recuse himself if he was not personally involved in the specific investigative situation.[55] General Counsel staff opined that Oberg's past experiences gave him an advantage in evaluating the merits of complaints.[56] Oberg seemed to agree with this opinion since he did not recuse himself if he was not personally involved in the complaint.

These opinions, however, contradict Oberg's statements to GAO investigators. He stated in response to questions about an administrative action taken by NARA management on the whistleblower case discussed earlier that he knew all of these people, had worked with them, and that they were all liars.[57] This statement illustrates Oberg's lack of objectivity, yet he investigated the case anyway because he was not personally involved in the specific situation. Moreover, OIG employees heard Oberg refer to the whistleblower in a derogatory manner a number of times, including statements that this person was ruining his career.[58]

- *The IG did not establish adequate investigative procedures.*

The IG Act prohibits the IG from routinely reporting to management officials because it compromises the independence of the IG. The NARA OIG did not develop its own policy and procedures manual. Instead, OIG policies and procedures are included as part of the NARA Administrative Manual. The provision in the NARA Administrative Manual regarding confidentiality in investigative files appears weak in that it implies that individuals outside of the OIG will have access to records containing confidential information and that these individuals are then responsible for protecting the confidential material. The Manual states in part, "Individuals with access to the records are responsible for protecting the confidentiality of the material."[59] Generally, investigative standards require that the responsibility for protecting the confidentiality of sensitive material remains with the OIG and that access be appropriately limited. Investigative standards also require the OIG to maintain appropriate files and indexes to protect confidential sources and information.[60] These requirements are in contrast to the NARA Administrative Manual, Section 99 which states that the OIG may maintain these files.[61]

The March 4, 1992, investigative procedures state, "Final investigative reports will be forwarded to office heads or staff directors, as appropriate for their information and/or action. Copies of investigative reports may be forwarded to [the Archivist] and/or [the Deputy Archivist] at the discretion of [the OIG]."[62] The HHS review of the investigative files and discussions with the IG investigator confirmed that, under Oberg, the OIG generally provided management with the entire investigative file regardless of need. This raises concerns under the Privacy Act. In addition, files could contain privileged or proprietary information. The files could also include grand jury materials prohibited from disclosure by the Federal Rules of Criminal Procedure (Rule

6(e)). When deemed necessary, a separate report for dissemination to management should be prepared that provides the minimum amount of information necessary for management to take appropriate action.

NARA investigative procedures in Section 1(d) state that "During any investigation sanctioned by [the OIG], employees are required to cooperate with the investigator and furnish any records, documents, or other materials that the investigator deems necessary for the successful completion of the investigation."[63] This statement is overly broad, and does not address special considerations where there is a criminal investigation.

The NARA Administrative Manual, Part 5, Section 113 (2)(b) implies[9] that individuals other than OIG investigators will be conducting interviews of subjects.[64] Both the IRS and Confederate currency cases discussed earlier confirm that non-OIG personnel did conduct interviews and that this involvement in investigative activities was counterproductive.

The GAO Office of Special Investigations report dated March 23, 1992, on the NARA IG, stated that the investigative files were not properly maintained.[65] In a letter from Wilson to Representative Conyers, Chairman, Committee on Government Operations, dated June 30 1992, Wilson states, "The IG has assured me this problem has been corrected." [66] Our review of a number of the OIG investigative files found that the problem with the investigative files has not been corrected. The files contain no system of serialization or document control. Documents were placed loose into the file thus leaving open the possibility of loss or destruction. This absence of any system could prevent NARA from establishing necessary chain of custody. Other problems can arise when information from an investigative file is needed to reconstruct case-related events or activities.

In summary, NARA investigative procedures do not protect the integrity of the evidence in the file or safeguard the confidentiality of those files. It appears that based on Oberg's assurances, Wilson misled Representative Conyers and the House Committee on Government Operations about the status of corrective actions taken by the OIG.

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[9] NARA Admin 201, change 37, Part 5, Section 113(2)(b) states "When a witness declines to answer a question for reasons of possible self-incrimination, the question will not be pursued, although the interview will continue. [The OIG] will be informed as soon as possible of the witness' declination to answer.(emphasis added)

NARA MANAGEMENT DISCLOSED SENSITIVE INFORMATION TO VANCE INTERNATIONAL DURING A PRESOLICITATION MEETING. HOWEVER, THE DISCLOSURES WERE NOT MOTIVATED BY PERSONAL GAIN.

In August 1987, NARA frustration and dissatisfaction with their security services peaked when Charles Mount, a researcher who frequented the NARA research room, was arrested for stealing a number of valuable documents. This event was the catalyst for the termination of the existing guard contract and the subsequent award to Vance International.

On August 14, the day after the Mount arrest, Megronigle asked Oberg, then Director of Administrative Services, to set up a meeting with Vance to discuss the kind of security services they offered. This meeting, according to Oberg, Megronigle and Weiher, was intended to be a "market survey" to determine if a higher level of security service was available from private companies.[67] According to the same NARA officials, Vance was contacted because Weiher was given a pamphlet on Vance by a General Services Administration employee several months before and had passed it on to Megronigle.[68] That same day, Oberg called Vance and set up a meeting for August 18. On August 18, Oberg met with James Levine and Daniel Thessen, Vance representatives, for about 15 minutes prior to a larger meeting with Megronigle and Weiher.[69] After this meeting, Weiher, Megronigle and Oberg were confident that there were companies who could provide a higher quality of security service than they currently had.[70] However, at this point, Megronigle states in his deposition, NARA officials still did not believe they could terminate the existing contract, issue a request for proposal (RFP), and award a new contract for a new security force in a short time frame.[71] While NARA fully intended to contract for a new security force given their dissatisfaction with the current one, they thought it would take months to complete the process.[72]

The NARA RFP was issued on September 4, 1987, under "emergency procurement" procedures to four firms. Two responded with bids, Vance International and Pinkerton. The contract was awarded to Vance.

This finding is divided into two major sections. The first section deals with presolicitation issues including the criminal allegations of wrongdoing and the allegation that NARA gave Vance a competitive advantage in presolicitation meetings. The second major section deals with contract award issues including the emergency procurement process NARA used to replace its security guards in 1987 and the acceptance of a late bid.

PRESOLICITATION ISSUES

There is no evidence supporting allegations of criminal wrongdoing on the part of NARA officials.

In December 1988, based on allegations of misconduct by NARA officials surrounding the Vance procurement, the FBI opened an investigation. They made inquiries into the activities of Megronigle and Oberg.

The FBI investigation report issued in January 1990 concluded "...no evidence that VANCE INTERNATIONAL defrauded the Government. Furthermore, there was no information developed during the investigation which indicated that MEGRONIGLE and OBERG accepted bribes and/or gratuities from representatives of VANCE INTERNATIONAL." (Exhibit 13) Beyond the criminal issue of accepting bribes specifically addressed in the FBI report, we found no evidence supporting allegations of "steering" the security services contract for personal gain by NARA management. We found that the motivating factor behind the termination of the existing guard service and the award of the new contract to Vance was the desire to ensure NARA an acceptable level of security services.

NARA gave Vance a competitive advantage, although it did so in an effort to obtain the best possible security service for NARA. There is no evidence of "steering" the contract to Vance for personal gain.

Conducting presolicitation meetings with potential contractors is an acceptable contracting practice to determine if the services the agency requires are available in the market place. However, the agency must conduct these meetings so that no one firm is given a competitive advantage when competing for the contract.

The fact that NARA held a presolicitation meeting only with Vance did not, in and of itself, provide Vance with a competitive advantage over other potential bidders. However, the August 18 meeting combined with the unplanned, yet expeditious, issuance of the RFP on September 4 (17 days after the meeting) resulted in a competitive advantage for Vance. We believe that had the RFP been issued months later, as Megronigle said they thought would happen at the time of this meeting,[73] the advantage to Vance would have been slight to non-existent.

Had Oberg, head of the procurement operation, been more knowledgeable and sophisticated in his approach to this procurement and advised Megronigle to invite other potential bidders to this meeting, there would have been no competitive advantage given to Vance regardless of when the RFP was issued. At a minimum, Oberg, who has admitted his lack of expertise in procurement and contracting issues,[74] should have consulted with his contracting officer(s) to determine if meeting

with Vance alone was appropriate. There is no record or indication that he consulted with his procurement staff prior to the end of August.[10]

More significant than the meeting itself is the nature of the discussions and information provided to Vance in these meetings. Had the discussion been limited to Vance describing its capabilities, the advantage provided Vance would have been slight to non-existent. However, the following evidence indicates that NARA did provide Vance with technical information regarding NARA requirements on the retention of current guards, the number of guards required, and on-site supervision.

- *NARA officials told Vance prior to issuance of the RFP that retention of any of the current guards would be unacceptable.*

  A major issue with NARA was their desire not to retain any current guards if a new security contract was awarded. Oberg, in particular, felt strongly that none of these guards should be retained.[75] Based on the Vance proposal alone, it seems clear that Vance knew NARA did not want to retain any of the current guards. Even though the RFP issued by NARA does not address this question at all, the Vance proposal does not include any of the current guards even for the initial phase-in period. Given that Vance was a very small firm with a limited number of employees, use of qualified current guards would have been a logical approach to take in staffing the contract until full time permanent staff could be hired. In fact, this is what Pinkerton, a much larger firm and the only other firm to bid, proposed to do.

  Both Megronigle and Oberg have denied that they discussed this issue with Vance representatives during the August 18 meeting.[11] Statements provided by one of the Vance representatives directly contradict Oberg's and Megronigle's statements.[12] Copies of notes from the Vance representative's calendar show that no current guard staff is to stay on. (Exhibit 14)

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[10] There is a written request in the file signed by Megronigle that indicates the procurement office was asked on August 28 to begin work on the RFP for security services. This is the first indication that anyone on the procurement staff, other than Oberg, was involved in this procurement.

[11] In his deposition before the Senate Committee on Governmental Affairs, Oberg was asked if the issue of then current Old Dominion guards staying was ever discussed. Oberg stated "At that time, I don't believe so." When asked if it was discussed at that meeting [large meeting on August 18] or the meeting before [short meeting between Oberg, Thessen, and Levine on August 18] Oberg replied, "Not at that time, no." He went on to state that the issue may have come up at a later date when they were negotiating or clarifying the technical proposals submitted by Vance and Pinkerton. Oberg Deposition, pages 88, 89. When Megronigle was asked, "Was the issue of retaining Old Dominion guards ever discussed at all? He replied, "No." "Was there any emphasis placed on the fact that if there was another contract, these guys had to go?" Megronigle replied, "No."

[12] Thessen also testified that "...Mr. Oberg made a statement that he would not feel comfortable retaining any of the people that were currently on the contract."

- *NARA officials discussed the importance of adequate on-site supervision with Vance prior to issuance of the RFP.*

  Megronigle denied that other contract requirements, such as the number of guards required and on-site supervision, were discussed with Vance representatives, Thessen or Levine, during the August meetings.[76] Oberg, on the other hand, evaded the questions in his deposition. He stated either that he could not remember talking to Thessen and Levine about the number of guards or that he may have discussed both the number of guards and on-site supervision.[77]

  Notes from Thessen's calendar show specific information on number of guards required: 12 guards during the day, 3 to 4 at night and 9 on Saturday and Sunday. There is also a notation that indicates current on-site supervision is inadequate. (Exhibit 14) These notes tend to confirm Oberg's testimony, that he may have talked about on-site supervision and that if he did talk about the number of guards he would have discussed it in relation to time of day and day of week. Further, Thessen clearly remembered his discussions with Oberg as evidenced in his deposition.[13]

- *Vance representatives left the presolicitation meetings with the impression that a RFP would be issued quickly. However, there is no conclusive evidence that NARA officials provided Vance with any specific information regarding the timing of the process.*

  There is conflicting evidence regarding whether Weiher, Megronigle, or Oberg gave Vance specific information on the contracting process, including the potential timing and type of RFP at either of the August 18 meetings. Megronigle's statements concerning this issue are contradictory.[14] Oberg denies providing any information on the timing of the contract or the type of contracting process being considered.[78] Both Thessen and Levine testified

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[13] Thessen testified that Oberg told them at the August meeting on-site supervision was probably the single most important area that they needed to tighten up on tremendously (p. 20).

[14] In his deposition Megronigle states he does not believe Oberg would have discussed the possibility of terminating the existing contract because at that time they had made no decision on that (p. 73). This is consistent with Oberg's testimony (Oberg Deposition, pp. 86 - 87, 89). Later in his deposition, Megronigle says that they told Vance they were considering finding a new security company but that no final decision had been made (p. 77). Megronigle also said in an interview with Leslie Cauley, a reporter with the Washington Times, "...I think in actuality they [Vance] may have known only about a week in advance that we were considering terminating the contract and soliciting bids." (Washington Times, 11/88; Transcript of taped interview prepared by HHS OIG, p. 4).

that they clearly remembered specific discussions about the contracting process.[15] As indicated earlier, Thessen, Levine, and Oberg refused to speak with us so we were unable to clarify this issue with them.

The evidence on this issue is inconclusive. The only evidence is Megronigle's conflicting statements and the conflicting statements of NARA officials and Vance officials. These statements are based on memories of events that occurred years before. We could locate no written confirmation that these discussions occurred (i.e., calendar or other notes) nor was there any subsequent action that lends credence to one side of the story or the other (i.e., Vance proposal did not use any of current guard force). However, Pokusa, Vance's contract expert, was called back from Chicago just subsequent to the NARA meeting for the purpose of responding to the impending RFP.[79] This cannot be seen as conclusive in that the study team was not allowed access to Vance records concerning Pokusa's travel, nor could interviews be conducted. The evidence concerning this issue is solely contained in Pokusa's deposition before the Senate Committee, which leaves the question open as to when he was called back.

Regardless of whether one of the NARA officials gave specific information about the contracting process, it is clear that Thessen and Levine left those August 18 meetings with the distinct impression that action on a RFP was imminent. It is conceivable that they reached this conclusion from the discussions about NARA's general dissatisfaction with the current contract, the reasons for their dissatisfaction, and the Mount incident.

NARA gave Vance a competitive advantage by holding presolicitation meetings with Vance and discussing important technical details. We believe that had Oberg been a more experienced, sophisticated, and knowledgeable contract office manager, or had he solicited the advice of his contracting staff, NARA's presolicitation activities could have been conducted properly. He also had a dual, competing responsibility for contracting and for security. His concerns for security probably prevailed. Given that these events occurred more than 4 years ago, and the best evidence seems to be individual, conflicting statements based on memory, this issue should be dropped and action pursued against no one.

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[15] Thessen testified before the Senate committee that Mr. Oberg "...made it very clear that the security contract at the Archives was being put up for bid primarily due to a number of problems that they had with the existing security contractor there...he did give us a short time frame that the contract was coming up fairly imminently" (p. 20). Levine testified that he remembered the use of the term "emergency procurement" and that a time frame of 30 days sticks in his mind (pp. 13 & 16).

CONTRACT AWARD ISSUES

Based on documents in the contract file, the procurement office was asked to begin work on the RFP on August 28, 1987. (Exhibit 15) On August 31, Megronigle discovered that the Justice Department had just awarded a security contract to Pinkerton. On that same day, NARA obtained a copy of the Justice RFP and decided to model their RFP on the Justice RFP. The Justice RFP made it possible to terminate the current security contract and issue the RFP for a new contract within days.[80]

NARA actions limiting the competition and the time frame for response were not improper.

On September 3, Megronigle decided to terminate the current contract effective October 5. On September 4, the RFP for a new contract was issued. The competition was limited to four sources because of the urgent nature of the procurement. Proposals were due by September 18. Marc Weisman, HHS Procurement Analyst and attorney with 11 years experience in Federal contracting, reviewed the Committee report as well as a number of documents from the contract file. Based on his review of these documents and discussions with the HHS team, he determined that, "While the Archives may have failed to gather together the best available potential sources it was not improper to limit the competition to four firms or to request that proposals be submitted in less than 30 days." (Exhibit 16)

There was no acceptable evidence substantiating that the Vance proposal was received late.

Proposals were received from only two of the four sources on the bid list, Pinkerton and Vance. The FBI file contained statements indicating that the Vance proposal was received after the bid closed. (Exhibit 13) However in reviewing the contract file, we found no evidence to substantiate these statements. The Federal Acquisition Regulation (FAR) 52.215-10 states, "The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation." Both Megronigle and John Swanson (former NARA contracting officer) stated that the NARA contracting office typically date- and time-stamped bids when they were received.[81] The Vance contract file contained the envelope for the Vance proposal. (Exhibit 17) It was date-stamped September 18. It was not time-stamped. There were no other documents in the file that met the FAR documentation requirement. The file on Pinkerton was not available for review. In this instance the NARA procurement office did not follow their own internal procedures or the FAR requirements.

NEITHER THE FBI NOR THE PCIE INVESTIGATED ALLEGATIONS OF NONCRIMINAL MISCONDUCT BY THE NARA INSPECTOR GENERAL, SINCE THEY DID NOT HAVE AUTHORITY TO DO SO.

The Committee report states that the Vance contract case was referred "...to the PCIE for review of Inspector General Lawrence Oberg by its Allegations Review Subcommittee....the Subcommittee chairman, an FBI official, declined to review or investigate the case. Instead, the chairman relied exclusively on the FBI's own declination for criminal prosecution without interviewing the FBI agent who handled the case...This was wrong."[82] Therefore, our study reviewed the propriety of actions by the PCIE and FBI in handling the noncriminal aspects of the Vance contract. The PCIE has no authority to investigate any wrongdoing and the FBI only has authority to investigate allegations of criminal wrongdoing. Therefore, no one has official authority to investigate allegations of noncriminal misconduct by IGs except the heads of the Agencies for which they work.

Nearly 2 years lapsed between the time the FBI completed its investigation alleging the NARA Inspector General may have been involved in misconduct and the time the head of the agency was notified.

As early as August 2, 1989, the PCIE Coordinator at the FBI, Lawrence Elston, notified the PCIE Coordinator at the Office of Management and Budget (OMB), Sam Adams, that procurement irregularities were being investigated at NARA. He was drawing attention to the matter because of the nomination of Oberg as Inspector General at NARA. (Exhibit 18) However, Oberg had actually been in the position for 4 months. The investigation was closed and an FBI memorandum was issued January 31, 1990. (Exhibit 13) This memorandum inferred that Oberg may have committed some administrative breach, but that "...there was no information developed during the investigation which indicated that MEGRONIGLE and OBERG accepted bribes and/or gratuities from representatives of VANCE INTERNATIONAL." Elston received a copy of this memorandum informing him that the criminal aspects of the case were closed.

In January 1990 the PCIE Allegations Review Subcommittee (ARS) was established to review, but not investigate, allegations of noncriminal wrongdoing against Inspectors General. This subcommittee was established under the authority of the Integrity and Law Enforcement Committee (I/LEC) of the PCIE. The ARS membership included the Chair and Vice Chair of the PCIE, the Office of Government Ethics (OGE), Office of Special Counsel (OSC), and Office of Personnel Management (OPM). The Archives procurement case was put on the ARS April 1990 meeting agenda for consideration. The ARS advised the Deputy Director, OMB that it was taking no further action. A copy of the letter was sent to the PCIE Vice Chair, Sherman Funk. (Exhibit 19) Wilson was not notified.

More than a year later, on August 15, 1991, staff of the Senate Governmental Affairs Committee met with the OGE staff to discuss concerns they had about NARA. The

concerns included issues raised, but left unresolved, by the FBI investigation of the Vance contract. However, OGE could not act until Wilson was officially notified of the FBI findings. As a result of a conversation with the Governmental Affairs Committee staff, Susan Gaffney, Chief of Management Integrity Branch at OMB, sent the FBI memorandum to Wilson on September 19, 1991. (Exhibit 20) Senator Glenn then sent a letter to OGE on November 1, 1991, requesting that the OGE conduct a review of the noncriminal misconduct alluded to in the FBI report. (Exhibit 21) On November 12, 1991, OGE sent a letter to NARA's designated agency ethics official (DAEO), Gary Brooks, indicating it had received a letter from the Senate Committee on Governmental Affairs and that NARA should advise OGE of any remedial action taken. The OGE also sent a letter to Wilson November 27, 1991, requesting a personal meeting and response to specific questions surrounding the Vance procurement. In this letter OGE pointed out that an article in the Federal Times on February 25, 1991, quotes Megronigle as saying that the FBI concluded "nothing was found to be amiss." This characterization of the FBI findings was incorrect. The OGE told Wilson that he was required by law to determine whether any disciplinary or corrective action should be taken under the administrative standards of ethical conduct for Government employees.

Because NARA felt it had insufficient information to take any action, it contacted the FBI on January 3, 1992, asking for information about the allegation that a NARA employee had provided Vance with nonpublic information which may have been useful in preparing its proposal. (Exhibit 22)

On January 28, 1992, the Chairman of the I/LEC, Douglas Gow, sent Wilson the letter from Gaffney and the FBI report. He requested that Wilson advise the ARS of any administrative actions he took in connection with the Vance procurement. A March 25, 1992, memo from the NARA DAEO to Wilson outlined the difficulty he had getting information from the FBI about their investigation. (Exhibit 23) Therefore, he prepared a report based on available information and without the benefit of information in the FBI files. On March 27, 1992, Wilson sent a report to OGE indicating the matter had been reviewed and that he contemplated taking no action against current NARA employees. (Exhibit 24) The OGE accepted the NARA report, agreeing that no further NARA action was indicated. However, the response did chide Wilson for allowing so much time to elapse before inquiring into actions surrounding the Vance procurement. The Committee report was issued in November 1992.

We find the major problem was the PCIE's failure to notify Wilson of the FBI findings in a timely manner. This would have made a NARA inquiry closer in time to the procurement possible. In fact, it appears that Megronigle may have erroneously thought they had been totally exonerated based on his statement in the Federal Times. Therefore, until they were contacted by OGE, there was no reason for NARA to believe they had anything to do. The OGE representative, a member of the ARS, evidently saw no need to refer the case to NARA in May 1990 when it was sent to OMB. It was only after the Committee began its inquiry that OGE contacted NARA.

It is difficult to determine if the ARS closed the case because they thought nothing more should be done or if they thought OMB should take some further action.

This demonstrates the consequences of not having clearly defined authorities and procedures. Once the FBI determined they were not going to pursue criminal prosecution, there was no official disposition for the case. Generally, when noncriminal misconduct is indicated, the FBI refers the case to the agency OIG. This avenue was not open in this case because the IG was implicated. Therefore, the noncriminal issues remained unaddressed until the Senate Committee began making inquiries. Even then, when the I/LEC Chair referred the FBI report to the agency head in January 1992, the I/LEC Chair had no official authority.

There is no process for assuring that noncriminal allegations of misconduct against Inspectors General are investigated and resolved when criminal prosecution is declined by the Department of Justice.

The only existing procedures and authority for investigating allegations concerning Agency heads and Inspectors General were issued by the Deputy Director of OMB, Joseph Wright in a September 1, 1983, memorandum to Heads of Departments and Agencies represented on the PCIE. (Exhibit 25) When the FBI accepts such allegations for criminal investigation, they assume jurisdiction and investigate out of their existing authority. However, when criminal misconduct is not found, or prosecution is declined, yet noncriminal allegations remain, neither procedures nor authority exists for the PCIE or the FBI to investigate them.

In an April 11, 1990, memorandum to Frank Hodsoll, (then) Executive Associate Director at OMB, Oliver Revell, (then) Chairman of the PCIE, I/LEC, requested "a statement of authority to act, a statement making clear on whose behalf we are acting, and instructions as to whom we should submit any reports or other work products ..." (Exhibit 26) The letter also raised the issue of resources to support this function. Copies of this letter were sent to both the (then) PCIE Chair and Vice Chair. Sometime in the Summer or Fall of 1990 policies and procedures were drafted for handling these cases. (Exhibit 27) However, they were never finalized or adopted.

In another letter to Hodsoll dated May 13, 1991, Revell refers to his prior letter, indicating "the matter still remains unresolved." He also points out that there is a related matter, "...the ARS is also requesting clarification as to whether its records are considered the property of the PCIE, the OMB, or the Executive Office of the President, in addition to confirmation that they are covered by the FOIA."

Statements taken from Gaffney and Elston indicate the issue of PCIE and/or FBI authority to investigate allegations of misconduct by Inspectors General has been discussed and debated for some time.[83] This is evident from Hodsoll's testimony before the Senate Governmental Affairs Committee on May 20, 1992. His testimony points out the difficulty of handling allegations against IGs and their principal deputies. And he states, "In our discussions with the leadership of the IG community,

the FBI, and the staff of this committee, two things have become clear. The current system is not satisfactory and must be replaced...We are in the process of devising a solution...We still need to finalize our plans and receive concurrence from the agencies involved. We will have a proposal to share with this Committee very shortly."[84]

A proposal was prepared and sent to the U.S. Attorney General in October 1992, requesting temporary authority to act pending passage of specific legislation and allocation of new resources. This proposal would authorize the FBI to assume investigative responsibility for these allegations of noncriminal misconduct, along with the allegations of criminal misconduct which it already has. (Exhibit 9) On December 22, 1992, Senator Glenn also sent a letter to the Attorney General urging him "to review this matter expeditiously and grant such authority..."[85] The former Attorney General left office without giving this authority. And the problem remains.

RECOMMENDATIONS

THE ARCHIVIST SHOULD:

- clarify the role of the OIG by issuing policies and procedures emphasizing independence and confidentiality.

- follow OMB guidance for DFE IGs in selecting a new IG, including convening a panel of knowledgeable persons to review the applications and develop a list of the most highly qualified candidates for consideration by the agency head.

- review actions of the former IG, including his (1) taking directions from program managers, (2) breaching NARA employees' confidentiality, and (3) failing to correct OIG investigative file problems identified in a GAO report to determine if disciplinary action is appropriate. Corrective actions should be consistent with adverse actions taken against other employees at NARA and with the NARA table of penalties for multiple offenses.

    - Section 105-735.104 of the GSA Standards of Conduct (used by NARA) states, "GSA personnel shall not...take...any action known or believed to be in violation of U.S. laws, Executive Orders, or applicable directives, instructions, or regulations." The standards go on to state in §105-735.201 that personnel "...shall avoid any action...which might result in or create the appearance of: ...impeding Government efficiency or economy; Losing complete independence or impartiality; ...affecting adversely the confidence of the public in the integrity of the Government." The standards also state that disclosure of confidential information may subject employees to criminal or other penalties (§735.502, see 18 U.S.C. 1905). Chapter 752 of the NARA Administrative Manual dated June 3, 1986, App.752A-4, number 17 suggests penalties ranging from official reprimand to removal for a first offense and suspension to removal for a second offense for the offense of "Misconduct, whether or not in violation of a criminal statute, which impairs job performance or trustworthiness of the employee or otherwise impairs the ability of a NARA unit to perform its mission."

- review actions of other NARA management officials including the former Deputy Archivist that compromise the independence of the NARA OIG to determine if disciplinary action is appropriate. Corrective action should be based on sections 105-735.104 and 105-735.201 of the agency Standards of Conduct.

- review actions of the Assistant Archivist for Management and Administration for completing a misleading appraisal that was material to the selection of the NARA IG to determine if disciplinary action is appropriate. Corrective action should be consistent with the following:

    - Section 105-735.222 of the GSA Standards of Conduct (used by NARA) states, "GSA personnel shall not knowingly, willfully and unlawfully conceal, remove, mutilate, falsify, or destroy any government document or record (18 U.S.C. 2071)." Chapter 752 of the NARA Administrative Manual dated June 3, 1986, App.752A-4, number 13 suggests penalties ranging from official reprimand to removal for a first offense and suspension to removal for a second offense for the offense of "Knowing and willful misstatement or omission of material facts on, or unlawful concealment, removal, mutilation, or destruction of, official documents, contract files, or administrative records."

- refer this report to the Comptroller General to review NARA's agreement to pay the former IG's attorney fees and take appropriate action.

- assure that a top NARA management level official is thoroughly knowledgeable and trained in provisions of the Federal Acquisition Regulations and is an integral part of significant procurements.

- structure procurement responsibilities to guard against an official having procurement authority over major procurements in his or her own program areas.

No further time or effort should be spent investigating activities in connection with the 1987 Vance security guard procurement.

THE NARA INSPECTOR GENERAL SHOULD:

- take steps to ensure that audit and investigative functions fully comply with the IG Act and OMB guidance for DFE IGs.

- ensure that the NARA Administrative Manual reflects the provisions of the IG Act and OMB guidance for DFE IGs.

- develop a separate manual that reflects OIG operating policies and procedures.

- ensure that investigative staff have training on all provisions of Federal law enforcement.

THE OFFICE OF MANAGEMENT AND BUDGET, MANAGEMENT INTEGRITY BRANCH SHOULD:

- consider revising the OMB guidance for DFE IGs to encourage agency heads to interview candidates for IG positions before making selections.

- continue to pursue an administrative mechanism for the PCIE to investigate allegations of noncriminal misconduct.

- refer this report to the Archivist for appropriate action.

THE EXECUTIVE COUNCIL ON INTEGRITY AND EFFICIENCY SHOULD:

- work with OMB, the Senate Governmental Affairs Committee, and House Government Operations Committee to develop a training package for heads of Federal entities and Federal entity IGs.

ENDNOTES

1. Report by the Committee on Governmental Affairs, United States Senate, Serious Management Problems at the National Archives and Records Administration, October 1992, p. 37.

2. Ibid., p. xii.

3. This information was provided to the team by the FBI PCIE Coordinator, Lawrence Elston, the Senate Committee Counsel, Stephen Katz, and FBI Public Integrity Staff, Nancy Newsome.

4. S. Rep. No. 1071, 95th Congress, 2d Session 7 (1978).

5. HHS Interview, Dr. Don Wilson, March 9, 1993, p. 3.

6. HHS Interview, Dr. Don Wilson, March 9, 1993, p. 2.
HHS Interview, Claudine Weiher, February 19, 1993, p. 2.
Claudine Weiher Deposition before the Senate Committee on Governmental Affairs, February 4, 1992, pp. 31 - 32.

7. HHS interview, James Megronigle, February 23, 1993, p. 2.

8. HHS interview, George Henderson, former head of NARA Audit and Compliance staff, February 12, 1993, p. 2.

9. HHS Interview, Dr. Don Wilson, March 9, 1993, p. 3.
HHS Interview, Claudine Weiher, February 19, 1993, p. 2. Claudine Weiher, Deposition, February 4, 1992, p. 23.

10. HHS interview, Dr. Don Wilson, March 9, 1993, p. 3.
Claudine Weiher, Deposition, February 4, 1992, p. 24.

11. James Megronigle, Deposition, January 29, 1992, pp. 36 - 38.

12. HHS Interview, Dr. Don Wilson, March 9, 1993, pp. 1, 2.

13. HHS interview, Dr. Don Wilson, March 9, 1993, pp. 1, 2.

14. HHS Interview, Dr. Don Wilson, March 9, 1993, pp. 2, 3.

15. HHS Interview, Dr. Don Wilson, March 9, 1993, pp. 1, 3.

16. IG Act Amendments (P.L. 100-504), Legislative History, House Conference Report No. 100-1020, p. 28.

17. "Study of The Organization of Investigative Functions in Non-Inspector General Agencies," February 1986, p. 3.

18. "Study of The Organization Of Investigative Functions In Non-Inspector General Agencies," February 1986, p. 3.

19. Ibid., p. 6.

20. Runkel, Christopher M. and Leibowitz, Henry P. Conduct of Lawrence A. Oberg, Inspector General, in Connection with 1991 Move of Reagan Presidential Library Materials, December 22, 1992, p. 3.

21. Ibid., p. 3.

22. Ibid., p. 4.

23. Ibid., p. 3.

24. Ibid., p. 4.

25. Ibid., p. 29.

26. Letter from Don Wilson to Lawrence Oberg, December 23, 1992.

27. Settlement Agreement re: Lawrence A. Oberg and NARA, signed by Lawrence A. Oberg (2/19/93), Sheldon I. Cohen (2/16/93), Henry P. Leibowitz (2/12/93), and Raymond A. Mosley (2/12/93).

28. Ibid.

29. NARA Organization and Delegation of Authority Manual, Change 28, April 14, 1989, Transmittal Memorandum, Figure 1-1-1, p. 1-1, Figure 2-1-1, pp. 2-15 - 2-16.

30. NARA Administrative Manual 201, Chapter 11, Part 3, Section 1, 32.b.c.d.e., pp. 11-11 - 11-12 (draft dated 6/21/91).

31. U.S. General Accounting Office, Report to the Chairman, Committee on Governmental Affairs, U.S. Senate, Inspectors General Progress in Establishing OIGs at Designated Federal Entities, April 1990, p. 3.

32. Memorandum for the record prepared by the Deputy IG dated December 1, 1989.

33. HHS interview, Dr. Don Wilson, March 9, 1993, p. 5.

34. NARA OIG Case Number 92-010-NN.

35. HHS interview, Claudine Weiher, February 19, 1993, p. 3. HHS interview, Christopher Runkel, p. 1. Memorandum from Christopher Runkel to HHS Inspector General Personnel, dated February 23, 1993.

36. HHS interview, Claudine Weiher, February 19, 1993, p. 3. HHS interview, James Megronigle, February 19, 1993, p. 8. HHS interview, Christopher Runkel, February 22, 1993, p. 1. HHS interview, Henry Leibowitz, February 17, 1993, p. 3. List of interview questions from NARA OIG Case File Number 92-010-NN with routing slip dated August 11 from Michael Kurtz to Larry (Oberg) that states "Draft questions from Maida Loesher. She will add to these when she returns on Monday."

37. NARA OIG Case File Number 92-010-NN.

38. HHS interview, Maida Loesher, February 11, 1993, p. 1. HHS interview, Geraldine Phillips, February 11, 1993, p. 1. HHS interview, Christopher Runkel, February 23, 1993, p. 1. Memorandum from Christopher Runkel to HHS Inspector General Personnel, dated February 23, 1993, p. 5.

39. Memorandum from Christopher Runkel to HHS Inspector General Personnel, February 23, 1993, p. 2.

40. NARA IG Case Number 92-003-NN.

41. HHS interview, Chris Allen and Judy Sutrich, February 11, 1993, p. 2.

42. HHS interview, Chris Allen and Judy Sutrich, February 11, 1993, page 5.

43. HHS interview, Chris Allen and Judy Sutrich, February 11, 1993, page 4.

44. HHS interview, Debra Guentzel, January 7, 1993, p. 2.

45. HHS Interviews conducted with various NARA staff.

46. HHS interview with Weiher, 2/19/93, p. 2. HHS interview notes with Wilson, 3/9/93, pp. 3, 4.

47. NARA OIG Case Number 90-016-NC.

48. HHS interview, James Megronigle, February 19, 1993, pp. 4 - 5.

49. NARA OIG Case Number 91-001-NA. Surveillance Log, dated November 15, 1990 through November 30, 1990.

50. HHS interview with Henry Leibowitz, February 17, 1993, p. 1. HHS interview, Carl Salesky, January 7, 1993, p. 1.

51. OIG Name Check file. HHS telephone interviews with Kat Grillo (NARA OIG) and Janice Ruffin (former NARA personnel office) on March 5, 1993.

52. OIG Name Check File, dated July 12, 1991 through February 19, 1991.

53. Information provided by Carl Salesky, OIG investigator.

54. Lawrence Oberg, Deposition, January 28, 1992, p. 35. Gary Brooks, Deposition, February 5, 1992, pp. 9 - 14.

55. Gary Brooks, Deposition, February 5, 1992, pp. 9 - 10.

56. HHS interview, Gary Brooks, February 18, 1993, p. 3.

57. HHS Interview with Barney Gomez, GAO Investigator, Office of Special Investigations, January 6, 1993.

58. HHS interview, Carl Salesky, January 7, 1993, p. 2. HHS interview, Debra Guentzel, January 7, 1993, p. 2. HHS interview, Chris Allen and Judy Sutrich, February 11, 1992, p. 2. HHS interview, Christopher Runkel, February 22, 1993, p. 3.

59. Admin 201, Change 37, item 97, p. 11-43.

60. HHS OIG Special Agent Handbook, Chapter 3-60, pp. 1 - 3.

61. Admin 201, Change 37, item 99, p. 11-43.

62. NARA Administrative Manual, Chapter 201, Change 37, pp. 11-44 through 48, 100.a.b.

63. Admin 201, change 37, pp. 11-37.

64. Admin 201, Change 37, Item 113, pp. 11-49.

65. Special Report, U.S. General Accounting Office, Office of Special Investigations, March 23, 1992, GAO/OSI-92-4, pp. 1, 3 - 4.

66. Letter from Archivist to Chairman, Committee on Government Operations, June 30, 1992, p. 2.

67. James Megronigle, Deposition, January 29, 1992, pp. 72, 77. Claudine Weiher, Deposition, February 4, 1992, p. 61. Lawrence Oberg, Deposition, January 28, 1992, pp. 78 - 79, 81, 91. HHS interview, James Megronigle, February 19, 1993, p. 5. HHS interview, Claudine Weiher, February 19, 1993, p. 4.

68. James Megronigle, Deposition, January 29, 1992, pp. 57 - 60. HHS interview,

James Megronigle, February 19, 1993, p. 5. HHS interview, Claudine Weiher, February 19, 1993, p. 3.

69. Lawrence Oberg, Deposition, January 28, 1992, p. 78.

70. James Megronigle, Deposition, January 29, 1992, p. 80. Claudine Weiher, Deposition, February 4, 1992, p. 67. HHS interview, Claudine Weiher, February 19, 1993, p. 4.

71. Claudine Weiher, Deposition, February 4, 1992, pp. 63, 67. James Megronigle, Deposition, January 29, 1993, pp. 66 - 67, 77, 87. HHS interview, Claudine Weiher, February 19, 1993, p. 4. HHS interview, James Megronigle, February 19, 1993, p. 5.

72. Ibid.

73. James Megronigle, Deposition, January 29, 1993, p. 80.

74. Oberg testimony at Merit Systems Protection Board Hearing, Civil Action No. 91-0702, April 21, 1992, p. 279.

75. Lawrence Oberg, Deposition, January 28, 1992, pp. 111 - 114.

76. James Megronigle, Deposition, January 29, 1992, p. 78.

77. Lawrence Oberg, Deposition, January 28, 1992, pp. 86 - 87, 89.

78. Lawrence Oberg, Deposition, January 28, 1993, pp. 85 - 86.

79. Vance Representative Depositions before the Senate Committee on Governmental Affairs reviewed by HHS team at Committee's office.

80. James Megronigle, Deposition, January 29, 1992, pp. 84 - 87.

81. HHS interview, John Swanson, February 9, 1993, p. 3. HHS interview notes (taken by Robinson) from Megronigle interview, February 19 1993, p. 6.

82. Report by the Committee on Governmental Affairs, United States Senate, Serious Management Problems at the National Archives and Records Administration, October 1992, p. 35.

83. HHS interview, Susan Gaffney, February 24, 1993, p. 1. HHS interview with Lawrence Elston, February 18, 1993, pp. 1 - 2.

84. Statement of Frank Hodsoll, Deputy Director for Management, Office of Management and Budget, before the Senate Committee on Governmental Affairs, May 20, 1992, p. 8.

85. Senator John Glenn's December 21, 1992, letter to Attorney General William P. Barr, Department of Justice.

APPENDIX A

Interviews

NARA PERSONNEL

1. Gary Brooks, General Counsel
2. Walter R. Brown,
   Chief Personnel Operations Branch, St. Louis
3. John Constance, Director,
   Policy and Program Analysis Division
4. Patricia Freeman
5. Michael Kurtz, Deputy Assistant Archivist,
   Office of National Archives
6. Henry Leibowitz,
   Employee & Labor Relations Branch Chief
7. Maida Loesher
8. *James Megronigle, Assistant Archivist
   Office of Management and Administration
9. Raymond Mosley, Acting Deputy Archivist
10. **Lawrence Oberg, Former IG
11. Geraldine Phillips
12. Rita Richardson
13. Christopher Runkel, Attorney-Advisor, General Counsel
14. Carl Salesky, OIG Investigator
15. Nancy Taylor
16. *Claudine Weiher, Deputy Archivist (1986-1992)
17. Don Wilson, Archivist

FORMER NARA PERSONNEL

18. Christine Allen, Former OIG employee

19. Lewis Belton, Former OIG employee

20. Jill Brett, Former Public Affairs Officer

21. Debra Guentzel, Former Deputy and Acting Inspector General

22. George Henderson,
Former Head of Audit and Compliance Staff

23. Wilma Kriviski, Former Director of Personnel Services

24. Janice Ruffin

25. Judy Sutrich, Former OIG employee

26. John Swanson, Former contracting officer

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

27. Stephen Katz, Counsel

28. Thomas W. McClure, Investigator

OFFICE OF SPECIAL COUNSEL

29. Robert LaRue

30. William Shea

OFFICE OF MANAGEMENT AND BUDGET

31. Jack Donohue

32. Susan Gaffney

33. David Haun

34. Suzanne Murrin

35. Kim Newman

GENERAL ACCOUNTING OFFICE

36. Charles Culkin

37. Barney Gomez, Office of Special Investigations (OSI)

38. Jack Hafnagle

39. Tom Luttrell, OSI

FEDERAL BUREAU OF INVESTIGATIONS

40. Timothy Arney

41. David Bowie

42. Lawrence Elston, PCIE Coordinator

43. Oliver B. Revell

OTHER

44. Jill Cauley, Reporter, Formerly with the Washington Times

45. Sarah Lord, Attorney, Department of Justice

46. Nancy Newsome, Attorney, Department of Justice

47. Lynn Oliver, Former Director, Federal Contracts, Pinkerton

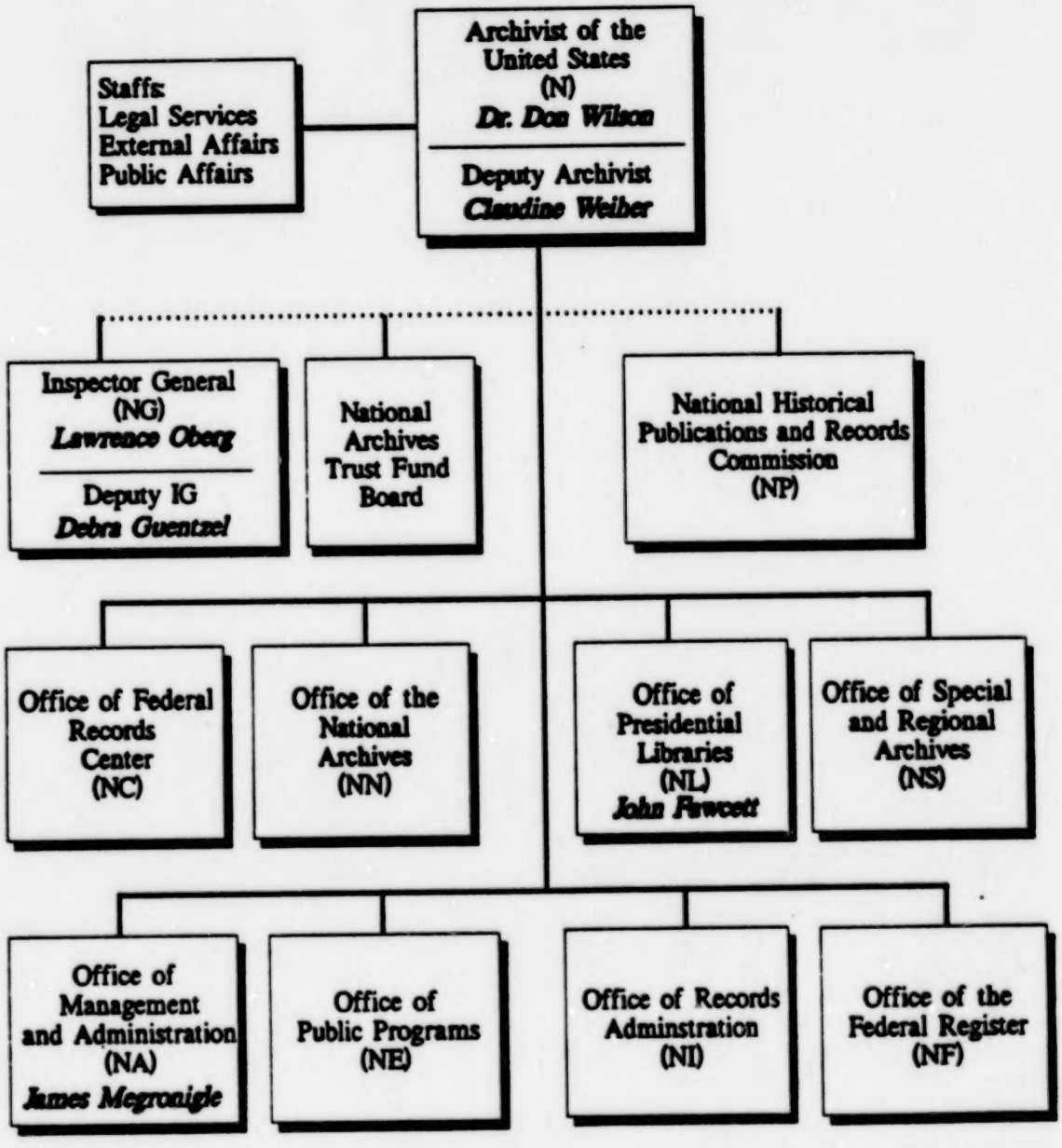
48. Marc Weisman, HHS Procurement Analyst, Attorney, HHS

* *With Attorneys*
** *Lawrence Oberg, upon advice of counsel, refused to talk to us without a grant of immunity from criminal prosecution.*

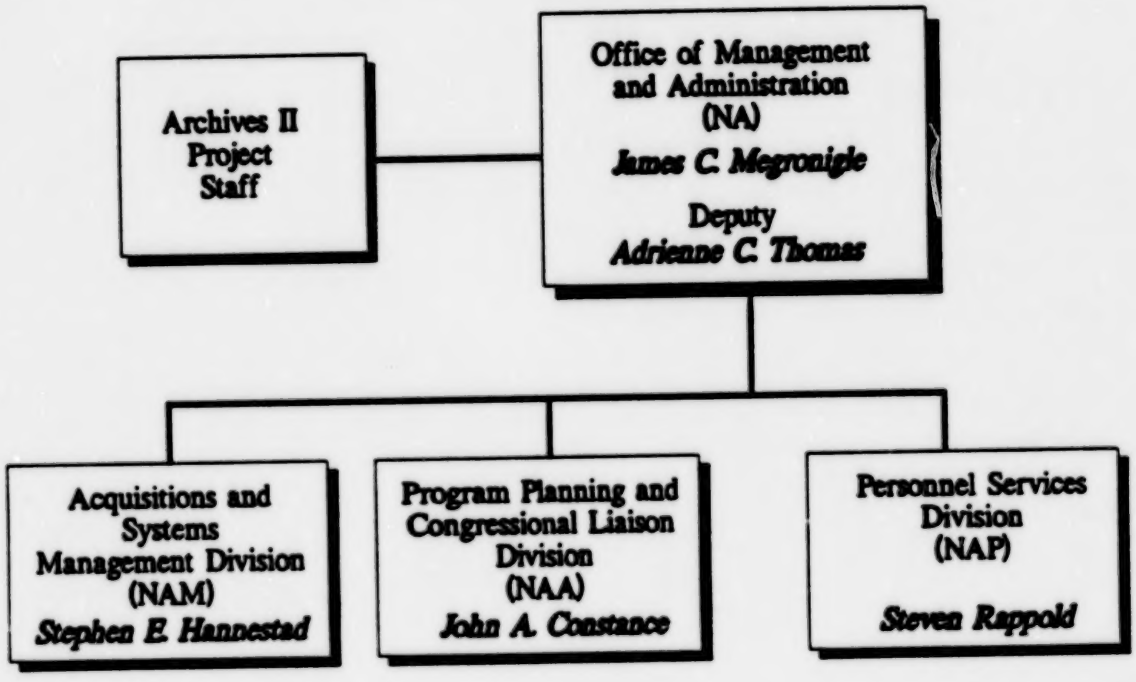
James Levine and Daniel Thessen, Vance Employees, refused to talk to us.

APPENDIX B

National Archives and Records Administration



Office of Management and Administration



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APPENDIX C

Related Investigations

AGENCY	DATE COMPLETED	INVESTIGATORS	CONCLUSIONS
FBI	01/31/90	Larry Elston Tim Arney	Closed Case - No criminal charges to file against either Oberg or Megronigle in relation to accepting bribes/gratuities from Vance
GAO OSI	03/23/92	Barney Gomez	Closed Case - no criminal charges to bring against Oberg
Office of Government Ethics	04/10/92	Stephen Potts	NARA appropriately resolved the standard of conduct issues in favor NARA employees (contracting practices).
Senate Committee	10/92	Senator John Glenn Steven Katz Thomas McClure	IG selection process was problematic; Oberg's performance while IG did not meet the high standards required of someone in that position; NARA management officials disclosed valuable inside information in procurement process; PCIE Allegations Review Subcommittee accepted FBI assessment without investigating broader issues.

APPENDIX D

Key People in Archives Study

National Archives and Records Administration

NAME	POSITION	TIMEFRAME
Don Wilson	Archivist	'89 - Present
Claudine Weiher	Deputy (Acting) Office of Special and Regional Archives	12/92 - Present
	Deputy Archivist	'85 - 12/92
Lawrence Oberg	Inspector General	04/89 - 01/93
	Director, Administrative Services	'85 - 04/89
Debra Guentzel	Inspector General (Acting)	11/92 - 01/93
	Supervisory Auditor	'89 - 11/92
James Megronigle	Director, Office of Management & Administration	'85 - Present
Wilma Kriviski	Personnel Services Division	'85 - 01/93 (Retired)
Stephen Rappold	Personnel Services Division	Present
	Chief, Personnel Svc. Branch	'85 - 01/93
Rita Richardson	Personnel Staff	'85 - Present
Stephen Hannestad	Acquisitions and Systems Division	'89 - Present
Gary Brooks	Legal Counsel	
Chris Runkel	Legal Counsel Staff	
John Constance	Program Planning & Congressional Liaison	
Henry Leibowitz	Employee & Labor Relations Branch Chief	

The Congress

NAME	POSITION
Senator John Glenn	Chairman, Governmental Affairs Committee
Stephen L. Katz	Counsel to Governmental Affairs Committee
Thomas McClure	Investigator, Governmental Affairs Committee

General Accounting Office

NAME	POSITION
Barney Gomez	Investigator, Office of Special Investigations
Charles Culkin	Sr. Asst. Director, Audit Oversight
Jack Hufnagle	Auditor

Federal Bureau of Investigations

NAME	POSITION
Lawrence Elston	Special Agent
Timothy Arney	Special Agent

Vance International

NAME	POSITION
James Levine	Director of Marketing
Daniel Thessen	Director of Operations

APPENDIX E

Key Events

1988	Amendments to IG Act require Archives to establish an independent Office of Inspector General to handle audits and investigations within Archives.
12/88	FBI opens investigation of allegations that certain NARA management officials were guilty of illegal contracting activities.
2/89	Archives begins actions necessary to recruit an IG. Announces vacancy, restricted to the Washington, DC area, and open only 11 days. Nineteen qualified candidates were produced, but no panel is set up to review those qualified or interview the candidates.
4/10/89	Lawrence Oberg, NARA employee, is selected as the IG at Archives and takes over as of April 16, 1989. Archivist made the appointment based on advice from top management officials Claudine Weiher and James Megronigle. The HHS investigation found that the Archivist did not exercise due care and diligence in the selection process and that Oberg's qualifications to be IG were misstated or untrue. His primary qualification seems to have been "knowledge of the agency."
1989	GAO expresses concern that OIG procedures at Archives are being drafted by the Director of Policy and Program Analysis Division, not someone within the OIG itself. GAO questions the independence of the IG under these circumstances.
8/02/89	FBI notifies PCIE that procurement irregularities are being investigated at Archives, drawing attention to Oberg.
11/22/89	The NARA IG meets with the Archivist to discuss GAO concerns of OIG independence. Agreements are reached as to independent audit and investigative work by the IG. However, Archivist requests from the Senate clarification as to his authority to direct audit work in June 1990.
1/90	FBI issues report on investigation concerning allegations that certain NARA management officials were guilty of illegal contracting activities. Report implies that Oberg may have committed some administrative breach. FBI does not pursue allegations because it only has authority in areas of criminal wrongdoing.

1/90	PCIE Allegations Review Subcommittee (ARS) established to review allegations of noncriminal wrongdoing against IGs. ARS advised that it was taking no further action on the Archives procurement case.
1990	Policies and procedures are developed by PCIE to handle cases of noncriminal allegations; these are not finalized or adopted.
1991	GAO begins investigation of NARA IG because of allegations of inadequate investigative procedures and OIG objectivity in investigations of NARA employees.
8/15/91	Senate Governmental Affairs Committee requests Office of Government Ethics to investigate Oberg and review NARA action responding to Archives contracting issues unresolved by FBI investigation.
9/19/91	Archivist officially informed of results of FBI investigation.
11/27/91	Office of Government Ethics requests response to specific questions surrounding the NARA procurement situation investigated by FBI.
1/03/92	NARA requests information about allegations of procurement fraud by its own employee, since it feels it has insufficient information to take action on its own.
3/27/92	Archivist sends report to Office of Government Ethics, indicating the situation had been reviewed and that no action against current NARA employees was being contemplated. Report was prepared without benefit of information from the FBI files, which could not be obtained. OGE accepted the report and agreed no further action was indicated.
11/02/92	Government Affairs Committee issues report "Serious Management Problems at the National Archives and Records Administration." Report is critical of Archives management actions, contends the NARA IG engaged in inappropriate activities, and that neither the FBI nor PCIE adequately pursued this wrongdoing.
11/11/92	Archivist requests Chair of the PCIE to review and evaluate the merits of Senate report.
12/08/92	PCIE requests that HHS IG conduct independent study of issues and allegations raised in the Senate report in order to draw conclusions and make recommendations as to the proper course of action by responsible officials.

12/21/92 Three HHS IG staff begin review of Committee and Archives files, and conduct more than 40 interviews of pertinent staff. Oberg, on advice of councel, would not answer questions.

12/22/92 Senator John Glenn requests US Attorney General to give the FBI temporary responsibility to investigate allegations of noncriminal misconduct of Inspectors General until specific legislation is enacted. Authority has not yet been given. Without official authority and a mandate to act, there is no accountability.

4/93 HHS IG issues report on its inspection.

Exhibit List

1. November 23, 1992 letter from the Archivist, Don Wilson, to the Chair of the PCIE, Frank Hodsoll

2. December 7, 1992 letter from the Chair of the PCIE, Hodsoll, to the Vice Chair, Julian De La Rosa

3. December 8, 1992 letter from the Vice Chair of the PCIE, de la Rosa to the Acting HHS Inspector General, Bryan Mitchell

4. March 13, 1989 Vacancy Announcement for NARA Inspector General

5. March 15, 1989 Supervisory Appraisal completed by James Megronigle for Lawrence Oberg to submit with application for NARA IG position

6. Report of Telephone Conversation on March 31, 1993 between Annette Cameron, HHS, OIG and Peter Koenig, Auditor, HHS, OIG

   Memorandum from Gary L. Kepplinger, Associate General Counsel, GAO, to Mr. Thomas N. Willess, General Counsel, Defense Investigative Services, August 23, 1991

   Copy of 5 CFR Chapter 11 § 1201.37 - Reference on Attorney Fees

7. June 7, 1990 Letter from the Archivist, Don Wilson to Chairman, Senate Committee on Governmental Affairs

8. June 26, 1990 Reply from Senator Glenn to the Archivist's June 7, 1990 Letter

9. October 21, 1992 Letter from William S. Sessions, FBI Director to Honorable William P. Barr, The Attorney General

10. Position Description for Lawrence Oberg's Previous Position, Director Administrative Service Division

11. Appraisals Completed by Deputy Archivist, Claudine Weiher for the NARA IG, Lawrence Oberg

12. December 9, 1992 Memorandum for the Record on OIG "800" Number prepared by the Acting IG, Debra Guentzel

13. January 31, 1990 FBI Letterhead Memorandum

14. August 18, 1987 Notes from Daniel Thessen's Calendar

15. Justification for Other Than Full and Open Competition for Vance Contract

16. DHHS Contracting Officer's Statement

17. Copy of Date Stamped Envelope Received from Vance International on September 18, 1987

18. August 2, 1989 Memorandum from Lawrence Elston, PCIE Coordinator, FBI to Sam Adams, PCIE Coordinator, OMB, Subject: Allegations Concerning Procurement Matters at NARA

19. May 4, 1990 Letter from Oliver B. Revell, Chairman, I/LEC Committee of the PCIE, to Honorable William M. Diefenderfer, III, Deputy Director, OMB

20. September 19, 1991 Letter from Susan Gaffney, Branch Chief, Management Integrity Branch, OMB to Honorable Don Wilson, Archivist, NARA

21. November 1, 1991 Letter from Senator John Glenn to Mr. Stephen D. Potts, Office of Government Ethics

22. January 3, 1992 Letter from Don Wilson to Mr. Thomas Carl, FBI Government Fraud Unit

23. March 25, 1992 Memorandum from Gary Brooks to Don Wilson (N), Subject: Supplement to NSL Report

24. March 27, 1992 Letter from Don Wilson to Mr. Stephen Potts, Director, Office of Government Ethics

25. September 1, 1983 Memorandum from Joseph R. Wright, Deputy Director, OMB to Heads of Departments and Agencies Represented on the PCIE

26. April 11, 1990 Letter from Oliver B. Revell, Chairman I/LEC, PCIE to Mr. Frank Hodsoll, Executive Associate Director, OMB

27. Undated Allegations Review Subcommittee (ARS) Policy and Procedures (Draft)

National Archives

Exhibit 1

Washington, DC 20408

NOV 23 1992

Chairman Frank Hodsoll
President's Council on Integrity and Efficiency
Office of Management and Budget
Washington, DC 20503

Dear Mr. Hodsoll:

I am very pleased that as Chairman of the President's Council on Integrity and Efficiency you have indicated a willingness to assist the National Archives in having the allegations contained in the Senate report "Serious Management Problems at the National Archives and Records Administration" given a full and impartial review. To this end I am respectfully requesting that you arrange for an Inspector General from another agency to be assigned or detailed to me to complete the review of allegations contained in the report. If appropriate, we would be willing to reimburse the agency for the cost of having an Inspector General assigned to NARA for this purpose.

As we discussed, I would like to have this review begin as soon as possible and understand that a report could be provided by the middle of January.

Sincerely,

DON W. WILSON
Archivist of the United States

Exhibit 2

PRESIDENT'S COUNCIL on INTEGRITY & EFFICIENCY

December 7, 1992

MEMORANDUM FOR JULIAN DE LA ROSA, VICE CHAIR
PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

W. DOUGLAS GOW, CHAIR
ALLEGATIONS REVIEW SUBCOMMITTEE

FROM: Frank Hodsoll
Chair

SUBJECT: Review of Allegations of Inappropriate Activity at the National Archives and Records Administration

Attached is a copy of a letter I received from Don W. Wilson, Archivist of the United States. He asks for the PCIE's help in reviewing allegations raised in the Senate Committee on Governmental Affairs report entitled "Serious Management Problems at the National Archives and Records Administration."

The allegations raised in the Senate report extend to several top Archives managers, including the Inspector General. I think that the PCIE can be of help in (i) reviewing the results of the Senate investigation, as well as other related investigations and correspondence; (ii) conducting any additional fact-finding necessary; and (iii) drawing conclusions and making recommendations as to the proper course of action by responsible officials.

Because the matters under review extend beyond the Office of Inspector General and have been the subject of previous investigations, PCIE review of this matter will differ in scope and methodology from the reviews generally conducted under the auspices of the Allegations Review Subcommittee. For this reason, I would like to ask the Vice Chair of the PCIE personally to make the arrangements for this review. I would further ask that the Vice Chair seek advice on the conduct of this effort from the Chair of the Allegations Review Subcommittee.

Specifically, I suggest the Vice Chair arrange for a reimbursable detail of staff from an Office of Inspector General to the Archivist. These staff would be charged with conducting the review described above. In order to preserve the actual and perceived independence of the review, I suggest that the detailed staff serve under the Vice Chair's direction and address their final report to the Chair of the PCIE, or -- in the absence of a Chair -- to the Chief of OMB's Management Integrity Branch.

Thank you for your help with this matter.

Exhibit 3

PRESIDENT'S COUNCIL on INTEGRITY & EFFICIENCY

DEC - 8 1992

Mr. Bryan M. Mitchell
Acting Inspector General
Department of Health and Human Services
330 Independence Avenue, NW.
Room 5250
Washington, DC 20201

Dear Bryan:

Pursuant to Mr. Frank Hodsoll's direction as stated in the enclosed December 7, 1992 letter, I am requesting that you undertake a review of the allegations contained in the Senate report, "Serious Management Problems at the National Archives and Records Administration (NARA)."

Before you begin your review, you should consult with Ms. Susan Gaffney of OMB for background information available to them.

It is further suggested that you talk to Mr. Lawrence Elston at the FBI to obtain any information that the PCIE's Integrity and Law Enforcement Committee may have that would be of assistance and ensure coordination with any issue they may be considering.

Another contact you should make is Senator John Glenn's Governmental Affairs Committee staff. Ms. Lorraine Lewis and Ms. Betty Ann Soiefer may make available additional background information.

In as much as the allegations may pertain to the Archivist as well as the IG, your report should be issued to the Chair of the PCIE prior to any other distribution.

Please feel free to contact me at any time and keep me posted as necessary during the course of the investigation.

Sincerely,

Julian W. De La Rosa
Vice Chair

Enclosure

cc: W. Douglas Gow
(Attn: Lawrence Elston)

RECEIVED
OFFICE OF INSPECTOR

51

VACANCY ANNOUNCEMENT

National Archives and Records Administration

VACANCY NUMBER	NA89-12
ISSUE DATE	March 13, 1989
CLOSING DATE	March 24, 1989

Exhibit 4

POSITION: Inspector General, GM-301-15

PROMOTION POTENTIAL: None

AREA OF CONSIDERATION: Status eligibles, Washington, D.C. area

LOCATION: Inspector General Staff, Washington, DC.

DUTIES: The incumbent serves as Inspector General for the National Archives and directs NARA's Inspector General Staff. The IG is responsible for developing and implementing an inspector general program as required by the Inspector General Act of 1978 as amended. Conducts independent audits of NARA programs; receives and investigates complaints about violations of laws, rules and regulations; reports findings and recommendations to the Archivist of the United States; and keeps the Archivist and the Congress informed through periodic reports as required by the Act.

QUALIFICATIONS REQUIRED: One year specialized experience equivalent to GM-14 in reviewing major operating programs which are nationwide in scope, preparing formal evaluations, and recommending corrective actions.

EVALUATION OF CANDIDATES: Candidates who meet basic qualifications will be evaluated to determine the extent to which they possess the following knowledges, skills, abilities, and other characteristics (KSAO's) required for this position:

1. Ability to conduct or direct investigations into allegations of wrongdoing, mismanagement, waste of funds, etc., and recommend corrective action.

2. Ability to plan, implement, and conduct an internal audit program and to use audit results as a basis for recommendations on the economical utilization, management, and control of agency resources.

3. Skill in written and oral communication.

SUPERVISORY APPRAISAL OF DEMONSTRATED PERFORMANCE OR POTENTIAL

ANNOUNCEMENT NUMBER	POSITION
NA89-12	Inspector General, GM-301-15
NAME OF APPLICANT	INSTRUCTIONS: Please have this appraisal completed by your supervisor and submit it with your application (SF 171). If the appraisal is submitted directly by the supervisor the applicant will be permitted to review and/or obtain a copy of the appraisal request.

SECTION I – DEMONSTRATED PERFORMANCE OR POTENTIAL

BASIS FOR APPRAISAL (Check one)				RANKING FACTORS (Knowledges, skills, abilities and personal characteristics)	LEVEL OF PERFORMANCE (Check one)				
OUTSIDE ACTIVITIES	ON-THE-JOB PERFORMANCE	FORMAL TRAINING	POTENTIAL		4	3	2	1	0
				Ability to conduct or direct investigations into allegations of wrongdoing, mismanagement, waste of funds, etc., and recommend corrective action.					
				Ability to plan, implement, and conduct an internal audit program and to use audit results as a basis for recommendations on the economical utilization, management, and control of agency resources.					
				Skill in written and oral communication.					

4 - EXCEPTIONAL
3 - ABOVE AVERAGE
2 - AVERAGE/ SATISFACTORY
1 - BARELY SATISFACTORY
0 - UNSATISFACTORY

SECTION II – NARRATIVE STATEMENT

BRIEFLY EVALUATE THE CANDIDATE'S OVERALL ABILITY TO PERFORM THE DUTIES AND RESPONSIBILITIES OF THE POSITION
(Narrative comments are required for all factors. If additional space is needed, use reverse side.)

CAPACITY OF APPRAISER FOR MAKING APPRAISAL *(Check one)*

☐ PRESENT IMMEDIATE SUPERVISOR ☐ PRESENT 2ND LEVEL SUPERVISOR ☐ OTHER *(Specify)*
☐ FORMER IMMEDIATE SUPERVISOR ☐ FORMER 2ND LEVEL SUPERVISOR

PERIOD DURING WHICH APPRAISER SUPERVISED THE APPLICANT:	FROM	TO
APPRAISER'S SIGNATURE	DATE	TELEPHONE NUMBER
EMPLOYEE'S SIGNATURE	DATE	

HOW TO APPLY: Submit the following forms:

-- SF-171, Application for Federal Employment (you may supplement your application with a narrative description of how you meet each KSAO, citing specific examples of experience, education, training, etc.)

-- Current performance rating of record or GSA Form 3413, Supervisory Appraisal of Demonstrated Performance or Potential (attached)

Applications may be mailed to:

National Archives and Records Administration
Personnel Services Division (NAP)
Washington, DC 20408

or delivered to:

Personnel Services Division (NAP)
Room 9108 Patrick Henry Building
601 D Street, NW
Washington, DC

Applications must be received or postmarked by the closing date of this announcement.

OTHER REQUIREMENTS:

This position is sensitive and appointment is subject to preappointment investigation and favorable adjudication.

For forms or more information, call 724-1513 (FTS or Commercial).

Consideration will be given to all qualified applicants without regard to race, color, creed, national origin, sex, non-disqualifying handicap, marital status, age, religious affiliation, or membership or non-membership in employee organizations.

Exhibit 5

ERVISORY APPRAISAL OF DEMONSTRATED PERFORMANCE OR POTENTI

UMBER	POSITION
	Inspector General, GM-301-15
LICANT	INSTRUCTIONS: Please have this appraisal completed by your supervisor and submit it with your application (SF 171). If the appraisal is submitted directly by the supervisor the applicant will be permitted to review and/or obtain a copy of the appraisal request.
oe Oberg	

SECTION I – DEMONSTRATED PERFORMANCE OR POTENTIAL

ASIS FOR APPRAISAL (Check one)				RANKING FACTORS (Knowledges, skills, abilities and personal characteristics)	LEVEL OF PERFORMANCE (Check one)				
OUTSIDE ACTIVITIES	ON-THE-JOB PERFORMANCE	FORMAL TRAINING	POTENTIAL		4 - EXCEPTIONAL 3 - ABOVE AVERAGE 2 - AVERAGE/ SATISFACTORY 1 - BARELY SATISFACTORY 0 - UNSATISFACTORY				
					4	3	2	1	0
	X			Ability to conduct or direct investigations into allegations of wrongdoing, mismanagement, waste of funds, etc., and recommend corrective action.	X				
	X			Ability to plan, implement, and conduct an internal audit program and to use audit results as a basis for recommendations on the economical utilization, management, and control of agency resources.	X				
	X			Skill in written and oral communication.	X				

SECTION II – NARRATIVE STATEMENT

BRIEFLY EVALUATE THE CANDIDATE'S OVERALL ABILITY TO PERFORM THE DUTIES AND RESPONSIBILITIES OF THE POSITION
(Narrative comments are required for all factors. If additional space is needed, use reverse side.)

See attached.

CAPACITY OF APPRAISER FOR MAKING APPRAISAL *(Check one)*

- ☒ PRESENT IMMEDIATE SUPERVISOR
- ☐ FORMER IMMEDIATE SUPERVISOR
- ☐ PRESENT 2ND LEVEL SUPERVISOR
- ☐ FORMER 2ND LEVEL SUPERVISOR
- ☐ OTHER *(Specify)*

PERIOD DURING WHICH APPRAISER SUPERVISED THE APPLICANT:	FROM 1982	TO Present
APPRAISER'S SIGNATURE	DATE 3/15/89	TELEPHONE NUMBER 523-3621
SECOND SUPERVISOR SIGNATURE	DATE	

Lawrence Oberg - Section II - Narrative Statement

1. Investigation. As Director of the Administrative Services Division, Mr. Oberg has headed the agency's security program and handled the agency's investigative requirements prior to the establishment of a formal IG unit. He has demonstrated excellent judgment in sensitive matters, coordinated with other agencies' IG units, law enforcement agencies, and U.S. attorneys on investigative matters. He has the program knowledge of many of the administrative areas, often subject to waste, fraud, and abuse, and is familiar with all NARA programs. He will be able to use that knowledge to establish priorities to obtain maximum benefits for the NARA IG unit resources.

2. Audits. While not directly involved in the agency's audit program, Mr. Oberg has prior experience supervising auditors. He has, in his present position, conducted reviews of his own organization as a basis for recommending improvements, and efficient management and control of operations.

3. Written and Oral Communications. Mr. Oberg has excellent written and oral communications. His reports and memoranda are clear and concise, and he has extensive experience in public speaking.

Exhibit 6

Conversation with Peter Koenig RE: Agency's authorization to pay employees' attorney fees 3/31/93

Peter called to tell me he has spoken to John Bowers, ASPER who said that an agency could only pay attorney fees under three circumstances: (1) MSPB appeal, (2) negotiated under union agreement or (3) formal EEO complaint settlement. He also said that the Comptroller General had had an approving official make restitution in a case about 1 1/2 years ago when a financial officer made such a payment without appropriate autorization.

Jeanette Cousin
4/5/93

GAO
United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-239592

August 23, 1991

Mr. Thomas N. Willess
General Counsel
Defense Investigative Service
1990 Half Street, S.W.
Washington, D.C. 20324-1700

Dear Mr. Willess:

This responds to your request for our opinion regarding apparent improper payments made pursuant to a settlement agreement between the Defense Intelligence Service (DIS) and one of its employees,1/ and the liability of the certifying officers who approved the payments. The payments at issue include payments for relocation expenses, annual, sick, holiday and administrative leave, and a within grade increase. For the reasons stated below, we conclude that these payments were improper.

The record shows that Mr. Michael Newman, Assistant Director of Resource Management, certified payment of the relocation expenses. Consequently, he is liable for this amount. The record does not identify the official who certified the remaining expenses. We will consider relieving that official, if appropriate, if you identify the official and submit the necessary documentation of his actions.

BACKGROUND

The Defense Investigative Service, after an administrative inquiry that documented misconduct by one of its special agents, proposed that the agent be reduced in grade and reassigned to another DIS office. The agent, with his attorney, negotiated a settlement agreement with DIS. Pursuant to that agreement, dated January 6, 1987, the agent agreed to resign from DIS effective March 20, 1987 and DIS agreed to (1) reassign the agent from a DIS office in Nashville, Tennessee to an office in Springfield, Missouri, prior to March 20, without a reduction in grade, (2) pay the associated moving and relocation expenses normally allowed by

1/ Based on our authority to determine the legality of expenditures of appropriated funds, this Office may determine the legality of awards agreed to be agencies in informal settlement of personnel actions. See, 64 Comp. Gen. 349, 351 (1985).

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DIS and relieve the agent from the statutory requirement that he continue employment with the agency for 12 months after the move, and (3) allow the agent to continue to use accumulated sick and annual leave until his resignation. The agent then signed a 12-month service agreement although neither party anticipated that the agreement would be honored. The agent subsequently moved to Springfield. DIS reimbursed the agent $16,723.19 in relocation costs. From the date of the agreement until his resignation, the agent used 296 hours of sick leave, 80 hours of annual leave and received 8 hours of holiday leave.

An investigation conducted by the Department of Defense's Inspector General confirmed the above facts and in addition found that although the agent never performed work for the Springfield office, he had been granted a within-grade step increase on February 1, 1987, prior to his resignation. The Inspector General concluded that payment of relocation expenses, the within-grade increase, and the grant of sick, annual, and holiday leave after January 6 were improper. We agree with the Inspector General's conclusions.

Relocation Expenses

The head of an agency can authorize or approve payment of the travel and relocation expenses of an employee transferred to another location for permanent duty. 5 U.S.C. §§ 5724(a). Payment is conditioned upon the determination by the head of the agency that the transfer is in the interest of the government and is not primarily for the convenience or benefit of the employee. 64 Comp. Gen. 268, 270 (1985). Travel, transportation, and relocation allowances may be paid only after the employee agrees in writing to remain in government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. 5 U.S.C. § 5724 (i).2/ If the employee violates the service agreement, the amount spent by the government is recoverable from the employee. Id.; B-230338, June 21, 1988, sustained on reconsideration, B-230338.2, June 2, 1989.

In this case, there is no evidence that such a determination was made. Since the employee never reported to his new duty station, it is difficult to conclude that the relocation served any legitimate government interest. The agent signed a service agreement, but never intended to, and did not in fact,

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2/Generally we do not consider a separation for cause to be a separation for reason beyond the employee's control. See e.g., 64 Comp. Gen. 643 (1985); B-114898, July 31, 1975; 47 Comp. Gen. 503 (1968).

comply with that agreement. Accordingly, we find that DIS was without authority to reimburse the employee for travel and relocation expenses.

Annual, Holiday and Administrative Leave

Administrative authority to grant an employee annual leave immediately prior to separation from government service, when it is known in advance that the employee is to be separated, is limited to cases where the exigencies of service require such action. 54 Comp. Gen. 655, 658 (1975). There is nothing in the record which indicates that any exigencies of service required granting the agent such terminal annual leave. To the contrary, it appears under the circumstances that the sole purpose for granting the leave was to induce the agent to voluntarily resign and refrain from contesting the proposed personnel action.

Because a federal holiday occurred during the period DIS granted the agent terminal annual leave, DIS credited the agent with 8 hours of holiday leave. Section 5551(a) of title 5, U.S. Code, provides that the period of leave used for calculating a lump sum payment shall not be extended due to any holiday occurring after the employee's separation. Since a lump sum payment should have been paid to the agent in lieu of granting him terminal annual leave, and under a lump-sum payment, holiday pay is not allowed, the agent was not entitled to receive the 8 hours of holiday pay. Cf. 61 Comp. Gen. 363 (1982).

The agent was also granted 40 hours of administratively excused leave, apparently in connection with his relocation. Administrative leave excuses federal employees without loss of pay or charge to annual or sick leave accounts during periods in which they perform no official duties. See generally, 64 Comp. Gen. 835, 843-44 (1985). Each agency has the responsibility for determining situations in which administrative leave will be granted. However, agency discretion is not unlimited. It must be exercised within the bounds of statutes and regulations and the guidance provided in our decisions. Id. We have specifically allowed the granting of administrative leave in connection with permanent change of station relocations. See, e.g., B-180693, May 23, 1974. In this case, however, since the payment of the agent's relocation expenses was not in accordance with statute, we

think the agency's grant of administrative leave in furtherance of the relocation was improper as well.3/

Sick Leave

The record shows that the agent used his entire balance of sick leave prior to resigning on March 20. According to the Inspector General's report, the agent stated that he was not sick or otherwise entitled to use sick leave from the date of the settlement agreement through the effective date of his resignation. The circumstances under which an agency may grant sick leave to an employee are set forth in 5 C.F.R. § 630.401, and in general involve incapacitation due to health-related concerns. See B-207444, Oct. 20, 1982. The record submitted to us does not document any such circumstances here. Accordingly, the agency's grant of sick leave to the agent was improper.

Within-Grade Increase

Similarly, the within-grade increase the agent received on February 1 was improper. The authority for granting such increases is contained in 5 U.S.C. § 5335 and its implementing regulations, 5 C.F.R. Part 531, Subpart D. In accordance with these provisions, employees must complete certain waiting periods for advancement between steps. In this case, but for the improper granting of sick leave and terminal annual leave, the agent would not have been eligible for the pay increase. We therefore find that he was not entitled to additional income received as a result of the within-grade increase.

Certifying Officer Liability

We recognize that public policy favors the amicable settlement of disputes, and agreements accomplishing this result will be disregarded only for the strongest of reasons. 62 Comp. Gen. 239, 244 (1985). Here, for instance, pursuant to the Back Pay Act, 5 U.S.C. § 5596 (1982), the DIS could have

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3/Our Office recently addressed, in similar circumstances, the propriety of a determination by DIS to grant an employee 1 year of administrative leave pursuant to a settlement agreement. In a response to a request for advice by the Merit Systems Protection Board, we stated "The award of administrative leave proposed here would not further any purpose or function of the Department of Defense. The agency would be expending funds without receiving any benefit in kind....Further, the fact that the administrative leave was granted in settlement of a personnel claim does not alter the result." B-236124, Jan. 2, 1990.

granted compensation to the agent if it had determined that the employee was affected by an unjustified or unwarranted personnel action. See 5 C.F.R. § 550.804(c).4/ Such a determination would have allowed the DIS to award back pay for the purpose of making the employee financially whole. In this case, DIS did not make such a determination; nor does the record evidence any DIS violations of law or regulation or commission of an unjustified or unwarranted personnel action when it proposed the reduction in grade. Since DIS authorized the leave and payment of relocation expenses in violation of applicable statutes, the government is entitled to reimbursement. See 67 Comp. Gen. 457, 464 (1988). The record shows that the agent was paid $16,723.19 in relocation expenses, $660.00 in administrative leave, $5,061.52 in sick leave, and $274.72 in holiday pay, for a total of $22,719.43.5/ Since the agent would have been due a lump-sum payment for his annual leave but for the agreement, he is entitled to retain the $1,332.00 he received in the form of salary as that amount is equivalent to what his lump sum payment would have been.

The overpayments to the agent constitute a debt owed to the United States, and the agent is liable for the $22,719.43 he erroneously received. 31 U.S.C. § 3711 (a)(1); 4 C.F.R. § 102.1(a). DIS is required to pursue collection unless the agency compromises the claim pursuant to 31 U.S.C. § 3711 (a)(1), as implemented by The Federal Claims Collection Standards (FCCS), 4 C.F.R. §§ 101-105. DIS states, however, that it does not wish to recover from the agent because it believes there is a substantial likelihood of litigation. DIS has informed us that it believes that Mr. Michael Newman, DIS Assistant Director of Resource Management, is liable as a certifying officer for the improper payments. A certifying official who signs a voucher is responsible for the existence and correctness of the facts cited in the certificate, voucher, or supporting papers and the legality of the proposed payment, and is liable for the amount of any illegal, improper or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal

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4/ An unjustified or unwarranted personnel action is defined in the regulations as an act of commission or omission that an appropriate authority subsequently determines to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation or mandatory personnel policy established by an agency or through a collective bargaining agreement. 5 C.F.R. § 550.803.

5/ These amounts include the increased value of the leave due to the improper within-grade increase.

obligation. 31 U.S.C. § 3528 (a). A certifying official who authorizes a payment that is improper, incorrect, or illegal, is jointly and severally liable with the person or persons who benefited from the payment to repay to the United States the amount of the loss incurred as a result of the illegal, improper, or incorrect payment. 67 Comp. Gen. 457 (1988).

The record shows that Mr. Newman signed, as approving official, the form authorizing the payment of relocation expenses. Consequently, he is liable for this erroneous payment. The record does not disclose the identity of the official who certified the remainder of the improper payments, the administrative leave, sick leave, holiday pay and within-grade increase.

This Office has authority under 31 U.S.C. § 3528 (b)(1)(A) to relieve a certifying official from liability when we find that the certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information. According to information provided us by DIS, Mr. Newman was the supervisor of Mr. Glaser, the DIS employee who negotiated the agreement. We think it unlikely that Mr. Newman was not aware of the terms of the settlement agreement when he authorized the payment of the relocation expenses. Furthermore, the record suggests that Mr. Newman was aware of the impropriety of the settlement; it notes that the DIS General Counsel, earlier, had advised against a similar proposed settlement in which Mr. Newman was involved. Memorandum from General Counsel to Director, DIS, January 31, 1990. Accordingly, on the basis of the present record, we must deny Mr. Newman relief from liability for the payment of $16,723.19 in relocation expenses. We note, however, that Mr. Newman's indebtedness would be reduced by any amount recovered from the agent and, pursuant to 31 U.S.C. § 3711(d), by any amount not recovered if the claim is compromised.

We will consider the issue of the certifying official's liability for the remainder of the improper payments, and relief, if appropriate, if DIS submits a request identifying the official who certified those payments, accompanied by the necessary documentation. We are suspending the statute of

limitations with regard to this matter to permit DIS the opportunity to provide us with this information. See 31 U.S.C. § 3526(g); B-235044, B-234947, B-234958, Mar. 20, 1990.

Sincerely yours,

Gary L. Kepplinger
Associate General Counsel

National Archives

Exhibit 7

Washington, DC 20408

JUN 7 1990

Honorable John Glenn
Chairman, Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter of May 21, 1990, transmitting a copy of the General Accounting Office (GAO) report entitled "INSPECTORS GENERAL - Progress in Establishing OIGs at Designated Federal Entities," and requesting a report of the status of issuance of new OIG policies for the National Archives and Records Administration (NARA).

This agency continues to be supportive of the goals and programs of the Inspector General Act Amendments of 1988 (P.L. 100-504). I am pleased with the leadership role that the NARA IG and his staff have taken in the implementation of the Act both within the agency and in the other 32 designated entities through programs arranged by the President's Council on Integrity and Efficiency (PCIE). I feel that the ongoing contribution of the IG is reflected in the most recent semiannual report, which was transmitted to your office on May 2, 1990; a copy is attached for your convenience.

As to progress on the written policies concerning the IG Act implementation at the National Archives, all issues except one were resolved last fall, and on that issue, I requested that the IG provide me with alternative policy statements. I have not yet received that draft and have inquired of the IG about progress to date. I will transmit to you the information and the reasons for the delay immediately upon receipt.

The one issue which remains unresolved is my ability to direct the IG to perform an audit when, as the head of a Federal entity, I think that one is necessary. I fully understand the need for and desirability of an independent IG. While the draft policies provided to the GAO would seem to indicate otherwise, the NARA IG and his staff have had complete independence in recommending and carrying out audits for the last year. As an agency head, my only concern is that I too have the ability to direct the IG to carry out audits in areas where, in my judgment, the agency

needs better internal controls and procedures. Our interpretation of P.L. 100-504 is that I have no alternative to the NARA IG in carrying out such audits.

I would be open to suggestions by your staff or the GAO as to language acceptable under the Act which would enable me to direct selected audits without threatening the independence of the IG.

Thank you for your consideration in this matter.

Sincerely yours,

DON W. WILSON
Archivist of the United States

Attachment

JOHN GLENN OHIO CHAIRMAN

SAM NUNN GEORGIA
CARL LEVIN MICHIGAN
JIM SASSER TENNESSEE
DAVID PRYOR ARKANSAS
HERBERT KOHL WISCONSIN
JOSEPH I LIEBERMAN CONNECTICUT
DANIEL K AKAKA HAWAII

WILLIAM V ROTH JR DELAWARE
TED STEVENS ALASKA
WILLIAM S COHEN MAINE
WARREN B RUDMAN NEW HAMPSHIRE
JOHN HEINZ PENNSYLVANIA
PETE WILSON CALIFORNIA

LEONARD WEISS STAFF DIRECTOR
FRANKLIN C POLK MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

Exhibit 8

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

June 26, 1990

The Honorable Don W. Wilson
Archivist of the United States
National Archives and Records Administration
Seventh Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20408

Dear Mr. Wilson:

Thank you for your June 7, 1990 response to my letter of May 21, 1990 which inquired as to the status of revisions to the policy documents describing the mission and functions of the Office of Inspector General.

Your response to my letter stated that you, as the designated Federal entity head, should have the ability to "direct" the IG to perform an audit you feel is necessary. You asked for the assistance of my staff in devising acceptable language under the Act that would enable you to possess such authority.

I believe it is contrary to the intent of the Inspector General Act for you or any other designated federal entity head to possess the authority to "direct" the IG to conduct audits. Such power over the IG's work has clear negative implications for the IG's independence. For example, such authority could be used by an entity head to order an IG to devote resources to a particular audit, perhaps to the detriment of other on-going or planned audits of higher priority. In instances where the IG is conducting an audit which, for some reason, the entity head disapproves, the entity head could use such authority to divert the IG's resources.

Of course, this does not mean that the entity head cannot request that the IG conduct an audit. Congress, the Senate Governmental Affairs Committee in particular, has always intended that the IG's remain responsive to the audit needs of the entity heads. In most every instance, I would expect that the IG would cooperate in handling the audit requests of the entity head. Thus, in seeking to protect and preserve the independence of the IG, I believe audit requests are the appropriate vehicle through which the entity head can communicate his or her audit priorities.

OFFICE OF INSPECTOR GENERAL
JUL -2 90
RECEIVED

In addition, it is not the intent of the Inspector General Act to deny you or any other agency head the authority to hire and deploy employees to perform functions integral to the day-to-day administration of the programs and delivery of services. These employees, members of the program operating team, may assist in identifying problems and suggesting changes in operation both before and after the problems develop. These employees would not be expected to have the independence of a statutory IG. You may want to seek to add these employees to your long-term resources.

I would appreciate being provided with a copy of the new OIG policy documents as soon as the appropriate changes are finalized. Thank you for your continued attention to this matter.

Best regards.

Sincerely,

John Glenn
Chairman

JHG:tlh

cc: Inspector General,
National Archives

Exhibit 9

October 21, 1992

Honorable William P. Barr
The Attorney General
Washington, D.C.

Dear Mr. Attorney General:

Mr. Frank Hodsoll, Deputy Director for Management, Office of Management and Budget (OMB), in his capacity as Chairman of the President's Council on Integrity and Efficiency (PCIE), has requested the FBI to commit investigative resources to the resolution of noncriminal allegations of misconduct by Inspectors General (IGs) or their deputies. Since passage of the 1978 IG Act, and prior to the January, 1990, formation of the PCIE's Allegations Review Subcommittee (ARS), these misconduct allegations have been investigated by uninvolved IG resources selected by the Deputy Director, OMB.

The PCIE, through the ARS, currently coordinates the resolution of noncriminal allegations utilizing authority derived from Executive Branch agency heads. This procedure is cumbersome and subject to criticism given the use of IG resources to investigate allegations of other IG misconduct. Specific legal considerations such as ownership of records and required public disclosures have also been raised concerning the Freedom of Information Act and Privacy Act.

FBI Associate Deputy Director - Investigations W. Douglas Gow is Chairman of the ARS. He testified concerning this matter on May 20, 1992, before the Senate Governmental Affairs Committee, chaired by Senator John Glenn. Senator Glenn favors having the FBI assume this investigative responsibility and has offered the support of his Committee in resolving any problems.

Honorable William P. Barr

The FBI's Legal Counsel Division conducted a review and determined that pursuant to Title 28, United States Code, Section 533, you have the authority to order such administrative investigations. However, this section is not specific, and to preclude a possible future challenge of your authority, passage of more specific legislation is desirable. This legislation, along with additional resources, would be pursued through OMB with the support and assistance of Senator Glenn. It is estimated that one support employee position and necessary supporting equipment, along with three Special Agent positions, would be needed at the present time.

I realize this request to take on additional duties comes at a time when OMB and Congress are projecting cuts in our budget; however, resolving allegations that denigrate the integrity of the IG community is an important and necessary task.

Should you concur with this request, temporary authority under Section 533 could be granted pending passage of specific legislation and allocation of new resources.

Sincerely yours,

William S. Sessions
Director

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Exhibit 10

POSITION DESCRIPTION *(Please Read Instructions on the Back)*

1. Agency Position No.: PC-8019

2. Reason for Submission: [X] Redescription [ ] Reestablishment [X] New [ ] Other
Explanation (Show any position replaced)

3. Service: [X] Dept [ ] Field

4. Employing Office Location: Washington, D.C.

5. Duty Station:

6. CSC Certification No.:

7. Fair Labor Standards Act: [X] Exempt [ ] Nonexempt

8. Employment/Financial Data Required: [X] Yes [ ] No

9. Subject to IA Action: [ ] Yes [X] No

10. Position Status: [X] Competitive [ ] Excepted (Specify)

11. Position is: [X] Supervisory [ ] Managerial [ ] Neither

12. Sensitivity: [X] Critical [ ] Noncritical [ ] Nonsensitive

13. Competitive Level Code: 210

14. Agency Use:

15. Classified/Graded by	Official Title of Position	Pay Plan	Occupational Code	Grade	Initials	Date
a. Civil Service Commission						
b. Department, Agency, or Establishment	Supervisory Security and Administrative Services Officer	GM	301	15		
c. Bureau						
d. Field Office						
e. Recommended by Supervisor or Initiating Office	Supervisory Logistics Management Spec.	GM	301	15		

16. Organizational Title of Position (If different from official title): Director, Administrative Service Division

17. Name of Employee (If vacancy, specify):

18. Department, Agency, or Establishment: National Archives & Records Service

a. First Subdivision: Office of Program Support

b. Second Subdivision: Administrative Services Division

c. Third Subdivision:

d. Fourth Subdivision:

e. Fifth Subdivision:

19. Employee Review. *This is an accurate description of the major duties and responsibilities of my position.* Signature of Employee (Optional):

20. Supervisory Certification. *I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationship, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.*

a. Typed Name and Title of Immediate Supervisor: Claudine J. Weiher, Assistant Archivist for Program Support
Signature: Claudine J. Weiher Date: 7/18/83

b. Typed Name and Title of Higher-Level Supervisor or Manager (Optional):
Signature: Date:

21. Classification/Job Grading Certification. *I certify that this position has been classified/graded as required by Title 5, U.S. Code, in conformance with standards published by the Civil Service Commission or, if no published standards apply directly, consistently with the most applicable published standards.*

Typed Name and Title of Official Taking Action:
ROBERT H. OPPENHEIMER
Personnel Officer, NARS
Signature: Date: 4/4/83

22. Standards Used in Classifying/Grading Position:

Information for Employees. The standards, and information on their application, are available in the personnel office. The classification of the position may be reviewed and corrected by the agency or the Civil Service Commission. Information on classification/job grading appeals, and complaints on exemption from FLSA, is available from the personnel office or the Commission.

23. Position Review	Initials	Date	Initials	Date	Initials	Date	Initials	Date	Initials	Date
a. Employee (Optional)										
b. Supervisor										
c. Classifier										

24. Remarks
Supervisory Code - 1
Full performance level - GM-15
This position is covered under GSA Merit Pay System

25. Description of Major Duties and Responsibilities (See attached)

GSA-HQ

* GPO : 1977 O - 241-530 (7040)

Optional Form 8 (Revised 8-77)
U.S. Civil Service Commission, FPM Chap. 295

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11

Supervisory Logistics Management Specialist

A. INTRODUCTION

The incumbent serves in the critical sensitive position of Director, Administrative Services Division, Office of Program Support, and is responsible for four broad program areas, facilities management, security and safety, property and procurement, and labor and transportation services. Has authority for and responsibility of planning, organizing, directing, coordinating and controlling the activities performed in subordinate units in providing full-range of support services to all NARS facilities, programs, and employees. Provides technical advice and assistance to the Archivist of the United States and other NARS managers concerning services for which the incumbent is responsible.

Maintains contact with high level managerial officials within NARS and GSA. The purpose of these relationships is to adjust services as needed and to resolve critical program problems.

B. MAJOR DUTIES

Directs or manages activities in following areas:

Facilities Management

1. Space management. Directs the development and administration of a space managment program including space analysis, planning, acquisition, assignment, utilization and release of space for all NARS activities located in the National Capital area and Boyers, Pennsylvania. Works directly with NARS Office Heads in effecting efficient assignment and utilization of office space, special purpose space, and storage space. Responsible for nearly 2,000,000 square feet of space.

2. Telecommunications management. Supervises the development and administration of the telecommunications program for the NARS activities located in the National Capital area and Boyers, Pennsylvania. Directs the installation and removal of telephone equipment and services and the performance of utilization surveys to ensure efficient and cost effective telecommunication services. Works directly with Office Heads and with ADTS telecommunications officials and commercial telephone company officials to ensure adequate, efficient, and cost effective telecommunication services.

3. Management of facilities

Responsible for the management of the facilities operation program for the Archives building, the Pickett Street Annex, Washington National Records Center, National Audiovisual Center, and the Boyers, Pennsylvania special storage facility to include: (1) planning and supervising the building management program of operation, maintenance, preservation, repair, improvement, and protection; (2) directing the cleaning, sanitation and janitorial programs; (3) providing for the use and conservation of utilities; (4) directing of contracting for repairs and alterations; (5) directing the performance of minor building and equipment repair; (6) controlling and approving the use of space for public meetings; (7) maintaining high level

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contacts with Office Heads and local public officials, planning groups, and businessmen on matters involving public meetings; (8) administering the use of lobby and conference rooms; (9) directing the maintenance of directory boards and signs; and (10) directing continuous inspections and surveys of physical plant facilities to ensure that safety and proper building services are provided.

4. Parking. Responsible for the development of policy and plans for assignment of employee and official parking at NARS facilities in the National Capital area.

5. Provides advice. Incumbent provides advice and information to Federal and State agencies, foreign governments, private institutions, and individuals on the professional and technical aspects of the design and construction of an archives and archival storage and filing equipment.

6. Exhibits. Supervises the construction and erection of the equipment and cases used to house documents on display at NARS facilities.

Security and Safety

1. Directs and administers the nationwide NARS security and safety programs; develops security and safety policies and procedures and establishes goals and priorities. Coordinates these programs with the appropriate organizational elements within GSA and other Federal, State, and local agencies.

2. Organizes and manages the NARS Self-Protection Program for civil defense, fire prevention, and building safety and is directly responsible for these programs in NARS facilities.

3. Develops, directs, and coordinates a program for effective and efficient operations of NARS in an emergency; directs and coordinates the performance of emergency functions assigned by Executive Order 11490, including the protection of records vital to emergency Government operations, and preservation of records necessary to protect the rights of the Government and private citizens.

4. Provides for the security of materials on exhibit in the Archives building, including the Charters of Freedom, Declaration of Independence, Constitution, and Bill of Rights; and furnishes advice on security measures for exhibit items loaned outside the building.

5. Prepares and revises NARS-wide administrative regulations governing all aspects of archival security and safety. Reviews and approves all archival security and safety regulations and procedures developed by other units in NARS before implementation to ensure conformity with NARS policy.

6. Develops and oversees the implementation of immediate and long-range plans for systematic archival security and employee safety programs in NARS, including determination of needs, goals, policies, procedures, and technical requirements as related to NARS archival holdings and to employees.

7. Reviews, studies, and evaluates NARS work procedures and practices and conducts an active program of surveys and inspections of NARS operations to identify security problems and safety risks and proposes appropriate measures to correct them.

MAR 25 '93 13:52

8. Maintains close liaison with and serves as staff consultant to the various organizational elements within NARS on all archival security and safety matters. Reviews, studies, and evaluates NARS work procedures and practices and conducts an active program of surveys and inspections of NARS operations to identify security problems and safety risks and proposes appropriate measures to correct them, particularly in stack areas where records are stored.

X 9. Prepares and revises NARS-wide administrative regulations governing all aspects of archival security and safety. Reviews and approves all archival security and safety regulations and administrative procedures developed by NARS organizational elements before implementation to ensure their conformity with NARS policy.

10. Identifies the needs for archival security and safety training of NARS personnel; ensures that training is provided to employees and security personnel who are responsible for NARS facilities. Seeks to establish an awareness of the need to safely and securely store and service records. Is responsible for organizing and directing staff meetings in NARS to discuss and review security and safety matters.

11. Serves as the NARS Document Security Officer and performs the functions specified in the Handbook, Information Security, chap. 1, par. 5c (ADM P 1025.2B).

X 12. Participates in inspections of all NARS facilities to ensure that NARS security and safety regulations are being complied with.

13. Maintains a reference file and library of current security and safety regulations, issued by Central Office and field elements, and of specifications on commercially-available security and safety equipment. Provides information to responsible officials so that the employee practices will conform to NARS archival security and safety regulations.

X 14. Manages security clearance program nationwide. ~ ?

15. Administers and coordinates the following miscellaneous services: Issuance and control of photo ID credentials, issuance and control of driver licenses, key control program and clearance of NARS employees leaving the agency.

Property and Procurement

1. Manages the personal property program within NARS involving utilization, control, and disposal of personal property including furniture, office equipment, office machines, and program equipment. Provides guidance and advice to accountable officers regarding serialized equipment. Maintains property inventory control of all equipment located in NARS. Incumbent has final authority to reassign, repair, rehabilitate, declare excess, transfer, or exchange property within NARS. Maintains necessary controls and records on all personal property transactions.

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2. Develops and administers the NARS plan for program equipment for NARS activities nationwide and develops annual administrative equipment plans for NARS Washington metropolitan area activities.

3. Conducts Property Management Program, including acquisition, assignment, accountability, physical inventory, repair and maintenance, and release for property owned by the National Archives Trust Fund in the Washington Metropolitan area.

4. Plans and directs the NARS Central Office contract and procurement programs (encompassing Government supply, formally advertised, and negotiated contracts), including National Archives Trust Fund procurement activities. Prepares specifications and contracts, seeks bids, and procures and arranges for procurement of all program equipment and office supplies from outside sources. Monitors performance of NARS contractors and responds to contract information requests from GSA and other sources. Acquires, stocks, and issues supplies required for all NARS Central Office activities. Maintains liaison with manufacturers, suppliers, contractors' representatives, and other private and public organizations to obtain updated information on new and improved equipment, supplies, techniques, service, regulations, and rates applicable to the management of office services functions.

5. Responsible for planning, organizing, and managing the trust fund mailroom. Conducts mail management studies to improve mail service, movement and handling procedures, and to reduce cost.

6. Plans and directs the operation of a common use supply room.

7. Serves as the NARS representative to the GSA Central Office Board of Survey.

Labor and Transportation Services

1. Plans and executes the transfer of records to or from the Archives Building, consults with officials of the Offices of the National Archives and Presidential Libraries and with officials of other agencies in planning these transfers; cleans and fumigates accessioned records; operates a delivery service for records loaned to Federal agencies; boxes and shelves records in NARS facilities.

2. Manages the NARS warehouse, including all shipping and receiving from the warehouse, Pickett Street Annex, and the Archives Building.

3. Responsible for directing the relocation and moving of NARS offices and equipment in the National Capital area when determined necessary.

4. Responsible for planning, organizing, directing, and coordinating the NARS transportation services program to include: (1) shuttle bus service, (2) special messengers, (3) classified mail delivery, and (4) delivery of supplies and equipment to satellite facilities.

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C. FACTORS

1. Knowledge and Ability Required. A working knowledge of the GSA space management program.

Must have a broad practical knowledge of the general missions, functions, and requirements of the National Archives and Records Service.

Space and telecommunications programs have unique and varied funding procedures which require knowledge of the agency's financial accounting and budget systems to provide adequate funding, financial support and control of the programs.

The ability to develop experimental procedures to apply to unusual problems.

A general knowledge of computer programs and capabilities.

Ability to work closely with heterogeneous groups to gain their cooperation.

Knowledge of GSA budget regulation and policies.

Knowledge of Federal Procurement Regulations, as well as laws, GSA rules and policies regarding procurement and contracting for equipment, supplies and services, etc.

Ability to analyze, modify, extend, recommend changes or adopt a new methods in order to improve current operations or accomodate additional programs.

Indepth knowledge of archival concepts, principles, and practices to the extent that the security needed for various record groups can be evaluated.

Broad knowledge of the various types and categories of Federal records and donated historical materials.

Comprehensive knowledge of techniques of program analysis.

Broad knowledge of the basic technology and literature relating to the safety and security fields.

Knowledge of the physical layouts of NARS facilities, nationwide.

Ability to develop effective written communications and detailed oral breifings.

2. Supervisory Controls. The Assistant Archivist for Program Support provides only very general instructions and overall policy direction. Work is evaluated in terms of effective program accomplishments and achievement of objectives.

3. Guidelines. Guidelines used in performing the work include the FPMR; GSA regulations, manuals, and directives as well as postal regulations. These guidelines are very broad and must be interpreted with mature judgment. Incumbent exercises a high degree of initiative in determining: (1) which should be used, (2) when deviations from traditional or established policies are necessary, or (3) when new methods should be developed.

Safety guidelines involve, in addition to GSA regulations, OSHA and NFPA standards. They are specific and detailed in many instances. At times, because of special circumstances, they are not practical or reasonable in application for archival purposes and they sometimes conflict with other priorities.

Security guidelines involve GSA regulations, procedures, and policies, ISOO directives, Executive orders, and the United States Code as well as State and local laws. Many of these guidelines are general in nature and thus require considerable interpretation for specific application. Also, in some instances, no guidelines exist and therefore must be developed by the incumbent as needed. Again, there are occasions where optimum archival security practices will conflict with other priorities, particularly as it concerns safety or public service..

4. Complexity. The programs managed are complex and require extensive contact and coordination with GSA Services and Staff Offices and the National Capital Region to ensure that key services (space, telecommunications, building management, contracting, etc.) are provided promptly and efficiently. The incumbent must be able to deal with high level personal both inside and outside the agency, including Heads of Services and Staff Offices with very divergent opinions. Must be able to direct, coordinate, and participate in field liaison visits to evaluate performance and suggest solutions to problems. Flexibility must be maintained to ensure prompt response to changes in programs to meet unanticipated events.

Some archival security and safety measures will be new state of the art solutions and thus, given NARS' importance in the archival community, have worldwide impact. There are few precedents. Archival security and safety measures often involve a certain amount of conflict or inconvenience for staff and the public, and these measures must thus be explained through training so as to gain support and compliance. Some security and safety problems, because of the layout of the NARS facilities, particularly the main Archives building, and the cost factors involved, may appear insolvable or impossible to correct.

5. Scope and Effect. The mission of the division is very broad in scope, affecting space management, contracting and procurement, personal property management, building repair and alterations, archival services, telecommunications, parking, security, safety, and emergency preparedness for NARS. These programs involve considerable contacts with other GSA officials.

Success of security efforts will affect the future availability of archival holdings and historical materials for use of the public and other Federal officials.

Success of security efforts will affect the future availability of archival holdings and historical materials for use of the public and other Federal officials.

Success of safety efforts will affect the well-being of the staff and consequently their productivity and overall morale.

Security and safety responsibilities have an impact nationally and worldwide as NARS upholds its leadership in the archival community.

The division's accomplishments have a direct impact on the entire NARS organization and mission, and affect all employees.

6. Personal Contacts. Requires frequent personal contacts with high level GSA officials, high level officials in other Government agencies including congressional and White House staff, representatives of the industrial community associated with the relevant technologies, the public, and archivists from State, local, and private as well as foreign archives.

7. Purpose of Contacts. The purpose of contacts is to obtain information, brief high level executives, obtain approval of proposed actions, coordinate actions, answer questions, provide information, defend controversial proposals and resolve conflicting priorities. Technical advice is provided which is used as a basis for making policy decisions and choosing alternative courses of action.

8. Physical Demands. The work is primarily sedentary, although there is some walking, bending, and carrying of moderately heavy objects. Considerable time is spent at construction and alteration sites. The work is quite stressful and at times requires intense concentration or working at top speed.

9. Work Environment. Mostly office setting, but also stack areas, construction and alteration sites, indeed all areas of all NARS facilities. As the Safety Officer, incumbent will routinely be called upon to enter areas where hazards exist so that an evaluation of the hazard can be made.

PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM
PERFORMANCE APPRAISAL

Exhibit 11

NAME: Lawrence A. Oberg

SSN: 217-44-7611

TITLE, SERIES AND GRADE: Inspector General (IG) Office of the Archivist (GM-0301-15)

OFFICE:

TYPE OF RATING:

- [X] Annual
- [ ] Interim

Interim rating because of:

- [ ] Reassignment
- [ ] Detail
- [ ] Change in rater
- [ ] Other _____

ANNUAL RATING PERIOD: 4/14/89 to 7/31/89

INTERIM RATING PERIOD *(If applicable)*: to

SUMMARY PERFORMANCE RATING

- [ ] Outstanding
- [X] Highly Successful
- [ ] Fully Successful
- [ ] Minimally Satisfactory
- [ ] Unsatisfactory

RATING OFFICIAL COMMENTS *(Optional)*:

Signature: Claudine J. Weiher — Date: 9/15/89

Signature: CLAUDINE J. WEIHER

REVIEWING OFFICIAL COMMENTS *(Optional)*:

Signature: Don W. Wilson — Date: 9/18/89

Signature: DON W. WILSON

PMRS POOL MANAGER APPROVAL:

Signature: [signature] — Date: 9/15/89

Signature: CLAUDINE J. WEIHER

DISCUSSED WITH EMPLOYEE:

Signature: [signature] — Date: 9/18/89

PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM
PERFORMANCE APPRAISAL

NAME
LAWRENCE A. OBERG

TITLE, SERIES AND GRADE
Inspector General GM-0301-15

TYPE OF RATING:

Interim rating because of:

__X__ Annual
____ Interim
____ Reassignment
____ Detail
____ Change in rater
____ Other _____

ANNUAL RATING PERIOD

August 1, 1991 to July 31, 1992

INTERIM RATING PERIOD (IF APPLICABLE)

SUMMARY PERFORMANCE RATING

____ Outstanding
__X__ Highly successful
____ Fully satisfactory
____ Minimally satisfactory
____ Unsatisfactory

RATING OFFICIAL COMMENTS (Optional)

Claudine Weiner 8/24/92

Signature Date

REVIEWING OFFICIAL COMMENTS (Optional)

9/25/92

Signature Date

PMRS POOL MANAGER APPROVAL:

Signature Date

9/1/92

DISCUSSED WITH EMPLOYEE:

Signature Date

NA FORM 3019 (7-86)

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NARA OIG "800" Number Telephone Service

Problem: The OIG has received over 1000 misdirected calls. Many callers stated they had asked for a specific agency OIG, and had been given our number. Apparently improperly listed.

Caller identity is supposed to be confidential. Billing notices contain caller phone numbers - and are sent directly to NAM. NAM advised the information is sent to the OIG without anyone on his staff reviewing it. Not acceptable.

12/07/92 Sent memo to NAM requesting correction of problem(s).

12/09/92 NAM called NG (DAG) and explained that billing procedure was acceptable to IG (LAO). Also said he had nothing to do with the listing, but said we could call the Sprint Center and check with the GSA contract rep.

12/09/92 Contacted Billy Harbert, GSA rep., (703)904-2925, to ask about correcting the listing problem and about obtaining the billing notices directly from the service provider. He said he would check on the matter.

12/16/92 Received call from Jim Donnelly, (703)904-2968, GSA service rep. who handles the NARA telephone contract. He said he did not think handling the billing as requested would be a problem, but he also said the caller telephone numbers could be deleted from the billings if necessary. Suggested arranging a meeting with Sprint rep., himself, and someone from the OIG. He will call with a meeting date.

National Archives

Washington, DC 20408

December 9, 1992

Memorandum for Record
Subject: OIG "800" Number - Directory Listing and Billing Notice Procedures

1. Reference my 12/7/92 memo to NAM, subject as above, copy attached.

2. Steve Hannestad, NAM, called today and provided the following comments in response to concerns about the OIG hotline directory listing and billing procedures.

a. Under FTS 2000, Sprint provides telephone service, and treats the Agency as a whole, not as separate offices. Steve Hannestad stated he personally receives the Agency billing, separates the charges for the OIG, and forwards the billing to the OIG. The NAMC staff does not do this function. Steve explained he had discussed this with Larry Oberg previously.

b. Steve Hannestad assumed that Sprint must have prepared the directory listing for the OIG number. He explained that no one in his office had anything to do with requesting any type of directory listing. He stated there was no type of request from his office that would have provided the wording for the directory listing.

3. I asked for a contact with the Sprint Service Center (Reston, VA), so we could pursue the hotline problems further. Bob Bohanan, NAMC, provided the person to start with at the Sprint Center -- Randy Clifton, 703-904-2841.

4. The OIG will contact Sprint and other OIGs to discuss our billing procedures and the directory listing. Perhaps the OIG can be treated as a separate entity to obtain a billing directly from Sprint. Also, we will determine what needs to be done to correct the directory listing.

Debra A. Guentzel
Debra A. Guentzel
Inspector General, Acting

cc: N, NA, NAA, NAM, NAMC

National Archives

Office of Inspector General *Washington, DC 20408*

Date : December 7, 1992

Reply to Attn of : NG (Debra Guentzel)

Subject : OIG "800" Number - Directory Listing and Billing Notice Procedures

To : NAM (Stephen E. Hannestad)

The billing notices for our Hotline "800" telephone number (800-786-2551) reflect over 1000 incoming calls since October 1991. Our office log indicates that many of the calls were intended for other agency OIG's. We spend considerable time responding to and referring these calls. The Agency also incurs the unnecessary expense of the improper incoming calls and the frequent long distance return calls.

Recent conversations with callers have revealed that many of them had requested the appropriate agency OIG Hotline telephone number from an operator, and then were erroneously given our number. It is apparent that our number is not properly listed in public access directories. A call to an AT&T 800 operator confirmed that we are listed as The Office of Inspector General in the Federal Government section of their directory. Consequently, we are listed as the OIG for the entire Federal government.

We request action be initiated to correct this existing problem to ensure that our number is properly listed. We should be listed as the National Archives and Records Administration - Office of Inspector General. And if possible, the listing should specify, Hotline for reporting Fraud, Waste, and Abuse.

Additionally, I previously believed that billing notices from the Agency's "800" service provider were being received directly by this office. I recently learned that we receive the notices from NAMC; we remove the caller identification information (caller telephone number); and then we return the notices to NAMC for payment processing.

In order to comply with the Inspector General Act and assure the caller anonymity, as also indicated in our last Semiannual Report to Congress, we must receive any information that may identify a caller directly from the service provider.

The service provider should be notified to submit the information pertaining to the OIG's "800" number directly to our Post Office box; we will extract the restricted material and forward the billing notices to NAMC for processing payments.

NARA Office of Inspector General
Post Office Box 50163
Washington, D.C. 20091-0163

Please call me or Carl Salesky at 724-0067 if further discussion or information is needed to process these corrective actions. Also, provide us the anticipated effective dates for these two actions. We request information copies of the letters, forms, or other documentation processed by you or your staff on these matters.

Debra A. Guentzel
Inspector General, Acting

cc: N, NA, NAA

Exhibit 13

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Falls Church, Virginia 22043
January 31, 1990

JAMES MEGRONIGLE
ASSISTANT ARCHIVIST FOR MANAGEMENT AND ADMINISTRATION
NATIONAL ARCHIVES;
CHARLES FREDERICK VANCE
PRESIDENT
VANCE INTERNATIONAL, INCORPORATED;
FRAUD AGAINST THE GOVERNMENT-NATIONAL ARCHIVES

Investigation of the captioned matter by the FEDERAL BUREAU OF INVESTIGATION (FBI) was predicated on information received from a confidential source during the month of December, 1988. The confidential source stated that JAMES MEGRONIGLE, a senior NATIONAL ARCHIVES official, took actions to insure that VANCE INTERNATIONAL was awarded the NATIONAL ARCHIVES security contract in 1987. According to the confidential source, VANCE INTERNATIONAL was awarded the contract even though PINKERTON, another security company, submitted a bid which was much lower.

CONFERENCE WITH US ATTORNEYS OFFICE

On December 30, 1988, Special Agents of the FBI discussed the above information with Assistant US Attorney (AUSA) DARRYL JACKSON, US Attorneys Office, Washington, DC. AUSA JACKSON requested that the FBI conduct an investigation to determine whether Federal bribery and/or fraud statutes were violated with regard to the alleged questionable procurement activities at NATIONAL ARCHIVES.

INVESTIGATION

The investigation determined that on September 4, 1987, NATIONAL ARCHIVES sent the security contract request for proposal (RFP) to four security companies; VANCE INTERNATIONAL, WACKENHUT, PINKERTON AND WELLS FARGO. The RFP required interested companies to submit their proposals (bids) by September 18, 1987. Because there was insufficient time to prepare a bid, WACKENHUT and WELLS FARGO did not respond. Only two companies, VANCE INTERNATIONAL and PINKERTON, INCORPORATED submitted bids to NATIONAL ARCHIVES.

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Officials of PINKERTON advised the FBI they had to "throw together" their proposal in order to meet the time restrictions imposed by the RFP. VANCE INTERNATIONAL's bid price was $ 3.8 million and PINKERTON's bid price was $ 2.7 million. On October 1, 1987, VANCE INTERNATIONAL was awarded the contract.

A review of the NATIONAL ARCHIVES security contract file determined that NATIONAL ARCHIVES procurement personnel waived several procurement regulations on the basis of exigent circumstances. Basically, these exigent circumstances were created when a determination was made on September 3, 1987, to terminate the contract with the security company then providing services to NATIONAL ARCHIVES. That termination was to take effect on October 5, 1987.

At the time of the procurement, JAMES MEGRONIGLE was the Assistant Archivist for Management and Administration and LAWRENCE OBERG, MEGRONIGLE's subordinate, was the Director of Administrative Services. OBERG sat on the two member technical review panel which recommended that VANCE INTERNATIONAL receive the contract award. OBERG justified the award to the highest bidder based on VANCE INTERNATIONAL's superior technical qualifications.

The investigation further determined that prior to the aforementioned RFP being sent out, JAMES MEGRONIGLE directed that LAWRENCE OBERG meet with representatives of VANCE INTERNATIONAL.

On August 14, 1987, OBERG held a conference with JAMES LEVINE, a Vice President with VANCE INTERNATIONAL. Evidence obtained during the investigation determined that OBERG told LEVINE of NATIONAL ARCHIVES' intentions to replace their security contractor. OBERG described for LEVINE the type of services being provided by the contractor, including the number of guard stations in place at the NATIONAL ARCHIVES building.

On August 18, 1987, OBERG, MEGRONIGLE and other NATIONAL ARCHIVES officials met with representatives of VANCE INTERNATIONAL.

On September 18, 1987, VANCE INTERNATIONAL submitted their bid to NATIONAL ARCHIVES after the deadline had passed. The VANCE INTERNATIONAL bid was accepted only after JAMES MEGRONIGLE directed procurement officials to waive the deadline requirement.

It was also determined that during 1988, OBERG frequently went to lunch with DANIEL THESSEN, the VANCE INTERNATIONAL employee who supervised the NATIONAL ARCHIVES contract. No evidence was found that THESSEN or other VANCE INTERNATIONAL representatives paid for OBERG's meals.

When interviewed by the FBI regarding their contacts with representatives of VANCE INTERNATIONAL, both OBERG and MEGRONIGLE stated that the purpose of these contacts was to gather information to be used in the preparation of the RFP. Both of them denied telling VANCE INTERNATIONAL officials of their intentions to hire another security company. Although the investigation found evidence to the contrary (August 14, 1987 contact with JAMES LEVINE), OBERG denied that he provided VANCE INTERNATIONAL officials with information which would be useful in preparing their (VANCE INTERNATIONAL's) bid. Both OBERG and MEGRONIGLE denied that their actions during the procurement process were intended to assist VANCE INTERNATIONAL in that company's attempts to win the contract award. OBERG stated MEGRONIGLE never attempted to pressure him into taking actions favorable to VANCE INTERNATIONAL.

FINDINGS

An extensive investigation conducted by the FBI discovered no evidence that VANCE INTERNATIONAL defrauded the Government. Furthermore, there was no information developed during the investigation which indicated that MEGRONIGLE and OBERG accepted bribes and/or gratuities from representatives of VANCE INTERNATIONAL.

OPINION OF THE US ATTORNEYS OFFICE

On January 23, 1990, the above information was discussed with AUSA WILLIAM LANDERS, Chief, Public Integrity Section, Office of the United States Attorney, Washington, DC. AUSA LANDERS declined prosecution in the captioned matter due to a lack of evidence to support a criminal prosecution against the captioned subjects. In view of AUSA LANDERS' position, the FBI will conduct no further investigation in the captioned matter.

Exhibit 14

Thessen

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TUESDAY
AUGUST, 1987

AUGUST 1987

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

135 Days Left

JULY 1987

S	M	T	W	T	F	S

SEPTEMBER 1987

S	M	T	W	T	F	S

TODAY'S TO DO ITEMS (NUMBER EACH ITEM)

1 ~~Do~~ Nat'l Archives

BUSINESS EXPENSES

APPOINTMENTS & SCHEDULED EVENTS

HOURS	NAME	PLACE	IN REF.
7			
8			
9			
10			
11			
12			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

PHONE CALLS

F

Thessen

DIARY RECORD OF WORK PERFORMED

34th Week
230th Day

TUESDAY
AUGUST, 1987

18

REF.	NAME OR PROJECT	DETAILS OF MEETINGS - AGREEMENTS - DECISIONS	TIME HRS.	TIME MIN.
1	Archives -			
2				
3	Guards trained & certified thru			
4	GSA.			
5				
6	12 guards @ day	9-Sat		
7	3-4 @ night	9-Sun		
8				
9	No current guards to stay on.			
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11	No adequate on-site supervision			
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13	Uniform & appearance - stringent			
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Exhibit 15

PROPERTY AND PROCUREMENT BRANCH
ADMINISTRATIVE SERVICES DIVISION
OFFICE OF MANAGEMENT AND ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
41 U.S.C.252(c)(2)

Findings

Pursuant to the negotiating authority of 41 USC 252(c)(2), the Contracting Officer hereby makes the following findings:

A. A request was received from the Director of the Administrative Services Division (NAS), on August 28, 1987, requesting contract coverage for Security Services during Fiscal Year 88 at the National Archives Building, 7th & Pennsyvania Ave., N.W., Washington, DC 20408.

B. The estimated annual dollar value of this requirement is $1,320,000 per year. The contract shall be for an initial year with two (2) option years.

C. Recent thefts of valuable historical documents at the Archives Building has resulted in a reassessment of the security requirements at the National Archives Building. As a result, the current contract for the above mentioned services will be terminated for the convenience, and in the interests of the Government effective 2400 hours on October 5, 1987.

D. The need for continuous and adequate protection for the historically valuable and irreplaceable documents stored in the National Archives Building still exist. Providing this service on an open market basis is cost prohibitive, as well as inadequate to the security needs of the agency. The General Services Administration has advised NARA that it can provide a maximum of four (4) Federal Protective Officers per shift to assist in our security needs, while the National Archives Building has upto thirteen manditory security posts during the day.

E. A synopsis will not be published in the Commerce Business Daily, since this requirement is of such unusual and compelling urgency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 calendar days after issuance of the bids or request for proposal, and is therefore within the purview of Federal

Acquisition Regulation 5,202.

Determination

Based on the foregoing, the Contracting Officer determines that a public exigency exists, and that the urgency of the need does not admit to delay incident to "sealed bidding". A contract for Security Services should be competitively negotiated pursuant to 41 USC 252(c)(2), by an authorized Contracting Officer of the National Archives and Records Administration.

John A. Swanson

John Swanson
Contracting Officer

Approved:

Elaine McKoy 9/3/87

Elaine McKoy
Chief, Property and Procurement Branch

James C Megronigle

James C. Megronigle
Acting Assistant Archivist for
Management and Administration

PROPERTY AND PROCUREMENT BRANCH
ADMINISTRATIVE SERVICES DIVISION
OFFICE OF MANAGEMENT AND ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

JUSTIFICATION FOR AWARD OF CONTRACT WITHOUT
OFCCP EEO PRE-AWARD CLEARANCE
Pursuant to FAR Section 22.805(a)(7)

Justification:

A. The incumbent contract for Security Services for the National Archives Building will be terminated for the convenience, and in the best interests of the Government effective at midnight, October 5, 1987. This termination resulted from a reassessment of the security requirements at the National Archives Building that followed recent thefts of valuable historical documents from that building.

B. The need for continuous and adequate protection for the historically valuable and irreplaceable documents stored in the National Archives Building is essential.

C. The Contracting Officer has prepared Findings and Determination under 41 U.S.C. 253(c)(2) establishing Unususual and Compelling urgency. This Finding and Determination has been approved by the Head of the Procuring Authority.

D. In order to provide the essential security services at the National Archives Building contract award must be made no later than October 2, 1987.

E. The National Archives and Records Administration has determined that it is in the best interests of the Government, based on extensive technical analysis, to award this contract to Vance International, Inc., a small business with headquarters located at 10467 White Granite Drive, Suite 210, Oakton, Virginia. This firm has not previously participated in a Government contract under the purview of E.O. 11246.

Recommendation:

Based on the foregoing, I hereby recommend that the head of the contracting activity approve the award of a contract for Security Services to Vance International, Inc. without the preaward clearance.

John A. Swanson

JOHN SWANSON
Contracting Officer

Contracting Officer's Statement

Upon review of the information on the procurement of security guard services for the National Archives, I find no evidence of improper procurement practices. However, had a more sophisticated procurement operation acted in a similar manner, I believe that the same procurement practices would be severely criticized.

The facts state that Archives had several serious incidents which put both the visiting public and the Archives collections at risk, and that the contract security force failed to exercise due diligence. As a result the Government determined that it was in its best interest to exercise its right to terminate the contract with Old Dominion. Section 49 of the Federal Acquisition Regulations (FAR) permits such termination for convenience when the Government determines, upon cause, that such action is in the Government's best interests.

Security is critical to the mission of Archives, therefore, once Archives determined that termination the Old Dominion contract was necessary, then Archives also had to began thinking how it would procure replacement services. While federal procurement seeks to promote competition, the FAR does permit limiting competition in certain circumstances. Part 6 of the FAR sets forth various permissible exceptions to full and open competition. One of these exceptions, at FAR 6.302-2, states that upon approved written justifications which demonstrate an unusual and compelling urgency, the Government may limit the number of sources from which its solicits proposals to "... as many potential sources as is practicable under the circumstances." While Archives may have failed to gather together the best available potential sources it was not improper to limit the competition to four firms or to request that proposals be submitted in less than thirty days.

The exception which permits the limiting of competition does not permit the Government to evaluate responding proposals in a manner which is other than fair and impartial. The requirements of Subpart 15.6 of the FAR, Source Selection, define evaluation standards which are impartial and which ensure selection of a source which has the highest degree of cost/price realism and whose performance is expected to best meet the stated requirement. It is in this area that Archives' conduct is most unclear. Sufficient information is not available to answer the following questions: (1) were all offerors told that proposing to utilize existing guard staff would be unacceptable, (2) was Pinkerton given unfair advantage by Archives use of the Justice Department's RFP, (3) was Vance International given unfair advantage during its contacts with Archives officials prior to the procurement, and (4) by attending a security industry trade show during the evaluation did an Archives source selection official gain trade information which could have caused unpublished factors to be used during the evaluation?

But, the most important question may be, how did Archives determine the cost/price technical trade-off? The procurement regulations support Archives' decision to select the higher ranked technical proposal even though it was priced significantly higher than a lower ranked technical proposal, but such selection should only be made upon an analysis of the proposed costs as associated with the technical requirements. The test for realism also looks to establish the relationship of the costs of performance to the individual technical evaluation factors. For example, if one proposal is technically superior to another, but the area of superiority is limited to a single technical factor, which factor is also of limited importance in fulfillment of the requirement, then paying a premium price would be inappropriate. Sufficient information is not available to determine if Archives conducted an adequate analysis of the offerors' scores on each technical evaluation factor as related to proposed costs. It should be noted that this is a common area of procurement protest, and that the General Accounting Office has upheld this test as being critically important in determining contract award. Also, this is the area of evaluation in which the technical and the procurement experts' unique skills combine. While it may appear as if the cost\price versus technical test has been passed, costs may still be unacceptable if, for example, unallowable costs such as those identified in Part 31 of the FAR are included.

Lastly, it should be noted that audits of procurement activities (which are usually performed by the Office of the Inspector General) look to issues of fraud, waste, and abuse, and focus on how contracting personnel review and apply the cost and price information which is furnished as the basis of negotiations. If the supervisory official represents both areas, a degree of objectiveness may be lost.

In conclusion, I restate my belief that no procurement rules appear to have been broken. However, I still voice concern that there is little documentation to support how Vance's price was determined to be reasonable, and I maintain that the overlapping of functional responsibilities has the potential to undermine objective evaluations.

Marc R Weisman

Marc R. Weisman
Contracting Officer
Dept. of Health and Human Services

NCE
NATIONAL

Vance International, Inc.

10487 White Granite Drive
Suite 210
Oakton, Virginia 22124

Negotiated (RFP)
Solicitaition # NASP-N2-P-0065
September 18, 1987 2:00 PM
Offer for Security Services
At The National Archives

Rec'd. 9/18/87

Exhibit 17

a International

Exhibit 18

PRESIDENT'S COUNCIL on INTEGRITY & EFFICIENCY

Date: August 2, 1989

To: Sam Adams, President's Council on Integrity and Efficiency (PCIE) Coordinator, Office of Management and Budget

From: Lawrence F. Elston, Coordinator PCIE, FBI

Subject: ALLEGATIONS CONCERNING PROCUREMENT MATTERS AT THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

The status of captioned matter was discussed with Associate Deputy Director Investigations Oliver B. Revell, FBI, on August 1, 1989 at which time he requested that the following summary be relayed to you.

ALLEGATIONS

Allegations telephonically received by you from Waymond Beslow (telephone number 566-5302) alleging procurement irregularities at NARA. Details were non-specific and Beslow indicated he was drawing attention to the matter because of the nomination of Lawrence Oberg as Inspector General at NARA.

Also received by you were allegations contained in a letter dated July 12, 1989 addressed to President George Bush from Nora D. Swilling alleging illegal and improper actions at NARA. Swilling also enclosed with her letter supporting documentation which included a signed statement.

STATUS

The FBI currently has a pending investigation which was initiated in December, 1988, concerning procurement matters at NARA. Although details of this investigation cannot be discussed, I can advise you that Swilling has been interviewed concerning this matter and Beslow will be contacted in the near future. Substantial investigation has been completed to date and it is anticipated that the matter will be presented to the United States Attorney's Office in the near future.

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Falls Church, Virginia 22043
January 31, 1990

JAMES MEGRONIGLE
ASSISTANT ARCHIVIST FOR MANAGEMENT AND ADMINISTRATION
NATIONAL ARCHIVES;
CHARLES FREDERICK VANCE
PRESIDENT
VANCE INTERNATIONAL, INCORPORATED;
FRAUD AGAINST THE GOVERNMENT-NATIONAL ARCHIVES

Investigation of the captioned matter by the FEDERAL BUREAU OF INVESTIGATION (FBI) was predicated on information received from a confidential source during the month of December, 1988. The confidential source stated that JAMES MEGRONIGLE, a senior NATIONAL ARCHIVES official, took actions to insure that VANCE INTERNATIONAL was awarded the NATIONAL ARCHIVES security contract in 1987. According to the confidential source, VANCE INTERNATIONAL was awarded the contract even though PINKERTON, another security company, submitted a bid which was much lower.

CONFERENCE WITH US ATTORNEYS OFFICE

On December 30, 1988, Special Agents of the FBI discussed the above information with Assistant US Attorney (AUSA) DARRYL JACKSON, US Attorneys Office, Washington, DC. AUSA JACKSON requested that the FBI conduct an investigation to determine whether Federal bribery and/or fraud statutes were violated with regard to the alleged questionable procurement activities at NATIONAL ARCHIVES.

INVESTIGATION

The investigation determined that on September 4, 1987, NATIONAL ARCHIVES sent the security contract request for proposal (RFP) to four security companies; VANCE INTERNATIONAL, WACKENHUT, PINKERTON AND WELLS FARGO. The RFP required interested companies to submit their proposals (bids) by September 18, 1987. Because there was insufficient time to prepare a bid, WACKENHUT and WELLS FARGO did not respond. Only two companies, VANCE INTERNATIONAL and PINKERTON, INCORPORATED submitted bids to NATIONAL ARCHIVES.

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officials of PINKERTON advised the FBI they had to "throw together" their proposal in order to meet the time restrictions imposed by the RFP. VANCE INTERNATIONAL's bid price was $ 3.8 million and PINKERTON's bid price was $ 2.7 million. On October 1, 1987, VANCE INTERNATIONAL was awarded the contract.

A review of the NATIONAL ARCHIVES security contract file determined that NATIONAL ARCHIVES procurement personnel waived several procurement regulations on the basis of exigent circumstances. Basically, these exigent circumstances were created when a determination was made on September 3, 1987, to terminate the contract with the security company then providing services to NATIONAL ARCHIVES. That termination was to take effect on October 5, 1987.

At the time of the procurement, JAMES MEGRONIGLE was the Assistant Archivist for Management and Administration and LAWRENCE OBERG, MEGRONIGLE's subordinate, was the Director of Administrative Services. OBERG sat on the two member technical review panel which recommended that VANCE INTERNATIONAL receive the contract award. OBERG justified the award to the highest bidder based on VANCE INTERNATIONAL's superior technical qualifications.

The investigation further determined that prior to the aforementioned RFP being sent out, JAMES MEGRONIGLE directed that LAWRENCE OBERG meet with representatives of VANCE INTERNATIONAL.

On August 14, 1987, OBERG held a conference with JAMES LEVINE, a Vice President with VANCE INTERNATIONAL. Evidence obtained during the investigation determined that OBERG told LEVINE of NATIONAL ARCHIVES' intentions to replace their security contractor. OBERG described for LEVINE the type of services being provided by the contractor, including the number of guard stations in place at the NATIONAL ARCHIVES building.

On August 18, 1987, OBERG, MEGRONIGLE and other NATIONAL ARCHIVES officials met with representatives of VANCE INTERNATIONAL.

On September 18, 1987, VANCE INTERNATIONAL submitted their bid to NATIONAL ARCHIVES after the deadline had passed. The VANCE INTERNATIONAL bid was accepted only after JAMES MEGRONIGLE directed procurement officials to waive the deadline requirement.

It was also determined that during 1988, OBERG frequently went to lunch with DANIEL THESSEN, the VANCE INTERNATIONAL employee who supervised the NATIONAL ARCHIVES contract. No evidence was found that THESSEN or other VANCE INTERNATIONAL representatives paid for OBERG's meals.

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When interviewed by the FBI regarding their contacts with representatives of VANCE INTERNATIONAL, both OBERG and MEGRONIGLE stated that the purpose of these contacts was to gather information to be used in the preparation of the RFP. Both of them denied telling VANCE INTERNATIONAL officials of their intentions to hire another security company. Although the investigation found evidence to the contrary (August 14, 1987 contact with JAMES LEVINE), OBERG denied that he provided VANCE INTERNATIONAL officials with information which would be useful in preparing their (VANCE INTERNATIONAL's) bid. Both OBERG and MEGRONIGLE denied that their actions during the procurement process were intended to assist VANCE INTERNATIONAL in that company's attempts to win the contract award. OBERG stated MEGRONIGLE never attempted to pressure him into taking actions favorable to VANCE INTERNATIONAL.

FINDINGS

An extensive investigation conducted by the FBI discovered no evidence that VANCE INTERNATIONAL defrauded the Government. Furthermore, there was no information developed during the investigation which indicated that MEGRONIGLE and OBERG accepted bribes and/or gratuities from representatives of VANCE INTERNATIONAL.

OPINION OF THE US ATTORNEYS OFFICE

On January 23, 1990, the above information was discussed with AUSA WILLIAM LANDERS, Chief, Public Integrity Section, Office of the United States Attorney, Washington, DC. AUSA LANDERS declined prosecution in the captioned matter due to a lack of evidence to support a criminal prosecution against the captioned subjects. In view of AUSA LANDERS' position, the FBI will conduct no further investigation in the captioned matter.

May 4, 1990 Exhibit 19

Honorable William M. Diefenderfer, III
Deputy Director
Office of Management and Budget
Room 252
Old Executive Office Building
Washington, D.C. 20503

Dear Mr. Diefenderfer:

Enclosed is a letterhead memorandum (LHM) concerning the results of an FBI investigation into allegations involving the Inspector General (IG), National Archives and Records Administration, Lawrence Oberg.

As noted on page three of the LHM, the investigation uncovered no evidence to implicate IG Oberg in any criminal activity. As such, the United States Attorney's Office (USAO) in Washington, D.C., declined any prosecution in this matter on January 23, 1990.

This matter was referred to the Allegations Review Subcommittee (ARS) of the Integrity/Law Enforcement Committee of the President's Council on Integrity and Efficiency subsequent to the FBI's initiation of an investigation. Based upon the results of the FBI investigation and the lack of criminal prosecution by the USAO, the ARS is taking no further action on this matter.

Sincerely,

Oliver B. Revell
Chairman
Integrity/Law Enforcement Committee

Enclosure

1 - Honorable Sherman M. Funk
Inspector General
Department of State
Room 6817
2201 C Street, N.W.
Washington, D.C. 20520

100

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Exhibit 20

SEP 19 1991

Honorable Don W. Wilson
Archivist of the United States
National Archives and
Records Administration
Eighth Street & Pennsylvania Avenue, N.W.
Washington, DC 20408

Dear Mr. Wilson:

I am enclosing a copy of a January 31, 1990 FBI Report of Investigation concerning actions by James Megronigle and Lawrence Oberg, who are employees of the National Archives and Records Administration. As indicated in the Report of Investigation, the Department of Justice declined prosection in this matter due to a lack of evidence to support a criminal prosecution. I am providing the Report to you for whatever administrative action you may deem appropriate.

I regret the delay in providing this Report of Investigation to you. When it was transmitted to OMB in May of 1990, staff in the Management Integrity Branch apparently assumed that it had separately been transmitted to you. Upon assuming full-time responsibility for the Management Integrity Branch several weeks ago, I checked with the FBI, only to find that they had not provided you with copy.

Sincerely,

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Susan Gaffney, Branch Chief
Management Integrity Branch

Enclosure

BCC: Official File
MIB Chron
Steinberg
Gaffney
FMD/MIB/9-19-91

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EXECUTIVE OFFICE OF THE PRES VT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D C 20503

MEMORANDUM FOR HAL STEINBERG

FROM: Susan Gaffney

SUBJECT: Attached Proposed Letter to the Archivist of the United States

Background on the referenced letter:

-- Larry Olberg is currently Inspector General of the National Archives. James Megronigle is currently Assistant Archivist, Office of Management and Administration.

-- When Buck Revell transmitted the Report of Investigation to OMB (letter of transmittal from Revell also attached), he made it pretty clear that neither the FBI nor the PCIE was taking any further action on it -- despite the clear possibility that the Report could be the basis for some administrative action. We should have followed up to ensure that the Report was provided to the Archivist; we didn't.

-- The matter came to my attention again yesterday, when I was talking to Tom McClure (Governmental Affairs staff). He indicated that Governmental Affairs staff is pursuing serious allegations about the NARA IG's lack of independence, and that the FBI is conducting an investigation that involves the IG in some way. He did not indicate that the Archivist was a subject of the FBI investigation.

-- It seems to me that the Archivist should have any official information dealing with questionable conduct by his employees, even if the information is not timely. This is particularly important because Governmental Affairs will undoubtedly confront the Archivist with some of these issues at a future point.

-- I am proposing to sign the letter, which is certainly not OMB protocol. My thinking was that it was most appropriate for me to take responsibility for the delay.

Exhibit 21

JOHN GLENN, OHIO, CHAIRMAN
SAM NUNN, GEORGIA
CARL LEVIN, MICHIGAN
JIM SASSER, TENNESSEE
DAVID PRYOR, ARKANSAS
HERBERT KOHL, WISCONSIN
JOSEPH I. LIEBERMAN, CONNECTICUT
DANIEL K. AKAKA, HAWAII
WILLIAM V. ROTH, JR., DELAWARE
TED STEVENS, ALASKA
WILLIAM S. COHEN, MAINE
WARREN B. RUDMAN, NEW HAMPSHIRE
JOHN SEYMOUR, CALIFORNIA
LEONARD WEISS, STAFF DIRECTOR
FRANKLIN G. POLK, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

November 1, 1991

Mr. Stephen D. Potts
Office of Government Ethics
1201 New York Avenue
Washington, D.C. 20005

Dear Mr. Potts:

On September 19, 1991, the Office of Management and Budget's (OMB) Management Integrity Branch contacted the Archivist of the United States about a Federal Bureau of Investigation (FBI) review of the conduct of high ranking employees of the National Archives and Records Administration (NARA). The Management Integrity Branch provided the Archivist with a copy of an FBI Letterhead Memorandum concerning the FBI's investigation of alleged preferential treatment in contracting by several high ranking NARA employees. As the OMB's letter indicates, it determined that the FBI had not provided the Archivist with a copy of the Memorandum, and OMB was doing so for purposes of the Archivist's own administrative action.

On August 15, 1991, staff of the Governmental Affairs Committee met with Gary Davis and Jane Ley of your office. The meeting involved a background discussion of concerns about the NARA, but Mr. Davis and Ms. Ley explained that your office could not become involved until there was an official communication of the FBI's Memorandum to the Archivist.

Now that the OMB has transmitted a copy of the FBI's Memorandum to the Archivist, we believe it is timely and essential for the Office of Government Ethics to conduct a review. We are requesting that you ascertain directly from the Archivist a complete account of any action he has taken with regard to the activities related to the subject of the FBI's Memorandum, before as well as after the time that he received a copy of the Memorandum. To the extent that NARA documents, or other materials are necessary for your investigation, we encourage you to request them directly from the NARA or other relevant sources.

We appreciate your assistance. In the event that you or your staff have questions, please call Lorraine Lewis or Tom Mcclure of the Committee staff at 202/224-4751.

Sincerely,

John Glenn

John Glenn
Chairman

FILE CO Exhibit 22

JAN 3 1992

Mr. Thomas Carl
Governmental Fraud Unit
Federal Bureau of Investigation
Washington, DC 20535

Dear Sir:

This is to make a formal request to your office on behalf of the National Archives and Records Administration (NARA) concerning our need for further information obtained by your agents during the course of a investigation for a contract awarded by NARA in 1987.

In late 1988, I was advised by Agent Tim Arney, of your Falls Church, Virginia field office, that the Federal Bureau of Investigation (FBI) was engaged in an investigation of NARA officials because of allegations made concerning a contract for security services awarded by NARA to Vance International Inc. in October, 1987. Apparently, by memorandum dated January 31, 1990, the investigation was completed and the United States Attorney's office declined prosecution (memorandum enclosed). By cover letter, dated September 19, 1991, the Office of Management and Budget transmitted the FBI memorandum of investigation to me for appropriate administrative action (letter enclosed).

I have been advised by NARA's General Counsel that the FBI memorandum raises questions about possible violations of standards of conduct by NARA employees which I now need to first examine, then provide a report of my review and any actions I would deem appropriate to the Office of Government Ethics. In particular, the FBI memorandum raises the issue of whether a Vance employee was provided with nonpublic information at a meeting with NARA officials which information may have been useful in preparing Vance's proposal.

The FBI memorandum, however, does not provide sufficient factual information to allow me to make a determination on this particular issue. I therefore request that the FBI provide me with any pertinent factual information, developed during the prior FBI investigation, including: (1) portions of witness statements by Vance employees about this meeting with NARA officials, (2) the use of nonpublic information, if any, in the preparation of Vance's proposal, and (3) any other factual information which would help resolve this issue. NARA is in possession of the other materials needed to analyze this issue.

Because certain current NARA officials were the subjects of the FBI investigation, I understand that your staff may be reluctant to share sensitive investigatory information with us. However, I am willing to consider any reasonable restrictions or conditions you may deem necessary to share this information in order for me to carry out NARA's administrative responsibilites.

If you need any further information about this matter, please contact me at 501-5130. Thank you for consideration of this request.

Sincerely,

(signed) DON W. WILSON

DON W. WILSON
Archivist of United States

Enclosures

Exhibit 23

National Archives

Washington, DC 20408

Date : MAR 25 1992

Reply to Attn of : NSL

Subject : Supplement to NSL Report

To : N

This is to advise you about the status of our request to the Federal Bureau of Investigation (FBI) for additional information which the FBI obtained during the investigation of the award of the Vance contract.

As you are aware, the FBI Report discussed generally the meetings between NARA officials and Vance representatives, but there were few details included. I wanted to review this information before completing my report to you. You requested access to this information by letter to the FBI dated January 3, 1992. Since early Feburary 1992, I have called at least once a week attorney Duncan Wainwight, of the FBI legal staff, to discuss our request. The discussions have covered various issues and concerns by the FBI about providing access to information from FBI sources. At the end of each conversation, I have requested a timely response to our request, even if the response were negative. To date, I have yet to receive a definitive response from the FBI.

Given the reluctance of FBI to provide us with any additional information, or even a response, I recommend that we proceed with our report to the Office of Government Ethics without this additional information. Pursuant to your instructions, I have prepared the attached report based upon all of the information available to me.

After you have the opportunity to review this report, I will be pleased to meet with you to answer any questions and discuss the next steps in the process.

Gary Brooks

GARY L. BROOKS
Designated Agency Ethics Official

F1
(34) Exhibit 24

National Archives

Washington, DC 20408

FILE COPY

MAR 27 1992

Mr. Stephen D. Potts
Director
Office of Government Ethics
1201 New York Avenue, NW
Washington, DC 20005-3917

Dear Mr. Potts:

This is in response to your letters of November 12, 1991, and November 27, 1991, requesting a report from NARA concerning whether any disciplinary or corrective actions should be taken under NARA's standards of conduct as a result of information included in the FBI's report of investigation, dated January 31, 1990.

Allegations regarding award of the Vance International contract first came to my attention in November 1988, when an FBI agent notified me that he was conducting an investigation into this matter. I was advised that NARA should postpone any action which could prejudice the FBI's ongoing investigation. I was never formally notified that the FBI had completed its investigation until receipt of the report by cover letter from the Office of Management and Budget, dated September 19, 1991. While there has been no formal NARA investigation into the award of the Vance contract, we have compiled a great deal of information about this issue, including testimony under oath before various administrative tribunals and Congressional committees.

I have directed NARA's Designated Agency Ethics Official (DAEO) to review all of the available information concerning this matter and provide a report to me. We have requested additional information from the FBI, but, despite numerous discussions, have yet to receive a definitive response regarding our request. Consequently, we have decided to proceed with our review and analysis of the available information. Additional information that is received later will be evaluated to determine if it would change any of our present determinations.

I have reviewed the DAEO's attached report and concur with his findings and determinations. Based upon the available information and the DAEO's report, I do not believe that any

current NARA employee violated any standard of conduct in the award process of the Vance contract. As a result, I do not contemplate taking any disciplinary actions against current NARA employees.

Sincerely,

(signed) DON W. WILSON

DON W. WILSON
Archivist of the United States

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Exhibit 25

SEP. 1 1983

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES REPRESENTED ON THE PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

FROM: Joseph R. Wright
Deputy Director

SUBJECT: Procedures for Investigating Allegations Concerning Certain Senior Administration Officials

On June 9, 1983, I notified you of the procedure to be followed in the event of allegations of misconduct against an Inspector General or the head of a Department or Agency represented on the Council.

That procedure has now been superceded by the following:

(1) Inspectors General will investigate allegations against agency heads unless they are of such a nature that they must be referred to the Department of Justice.

(2) The Chairman of the President's Council on Integrity and Efficiency will act as a clearinghouse to refer allegations against Inspectors General either to the Department of Justice, the Office of Government Ethics or the Office of Special Counsel.

Exhibit 26

April 11, 1990

Mr. Frank Hodsoll
Executive Associate Director
Office of Management and Budget
Room 260
Old Executive Office Building
Washington, D.C. 20503

Dear Mr. Hodsoll:

Thank you for attending the April 3 meeting of the Integrity/Law Enforcement Committee (I/LEC), PCIE. The Committee appreciates your willingness to devote time and effort to addressing the issues we discussed.

The chairman of the PCIE asked the I/LEC to be responsible for addressing allegations of improper and/or illegal conduct by Inspectors General or their high-level associates. The committee agreed to do so, and since January of this year 16 cases have been referred to the committee. They range from an anonymous complaint that an Inspector General and his staff abused frequent flyer programs to a request by the chairman of a congressional committee that a "peer review" of an Inspector General's office be conducted because of the chairman's concerns about the Inspector General's work, supervision, and cooperation with agency management.

The I/LEC formed the Allegations Review Subcommittee to handle these matters. The Subcommittee's concern over the best way to do its work and its concern over its authority prompted my asking you to attend the full committee meeting.

The current practice of the Subcommittee is to refer a matter to the Public Integrity Section, Department of Justice, if there appears to be a potential criminal predicate. On the other hand, the Subcommittee recommends to the chairman of PCIE that no action be taken if the matter appears frivolous.

In the case of an administrative allegation against a member of the staff of an Inspector General in a small agency, the Inspector General may request investigative assistance. The solution may lie in asking other Inspectors General to detail, on a reimbursable basis, one or more investigators from their staffs to the Inspector General requesting assistance. Those so

1 - Mr. Elston
1 - Mr. Miller
JEM:ytm (17)

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detailed would report to the Inspector General. In those cases in which the Inspector General himself/herself is the subject of the allegation, the solution may lie in a similar arrangement, but with those detailed reporting to the head of the agency. When the detailing of investigators is requested, the Subcommittee could serve as a clearinghouse so that responses to requests for help could be shared equitably among the Inspectors General.

In those cases in which both the Inspector General and the head of the agency are involved, it is our belief that the matter should be referred to the White House Counsel for proper resolution.

The Allegations Review Subcommittee welcomes the opportunity to assist as best it can in whatever role it is asked to play. We request a statement of authority to act, a statement making clear on whose behalf we are acting, and instructions as to whom we should submit any reports or other work products that may be generated. We also ask that the question of resources be addressed. Neither the I/LEC nor the Allegations Review Subcommittee has any resources. As the number of allegations increases, this lack of resources will become of increasing importance.

Sincerley yours,

Oliver B. Revell
Chairman
Integrity/Law Enforcement Committee

1 - Honorable William M. Diefenderfer, III
Chairman
President's Council on Integrity and Efficiency
Office of Management and Budget
Room 252
Old Executive Office Building
17th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20503

1 - Honorable Sherman M. Funk
Vice Chairman
President's Council on Integrity and Efficiency
U.S. Department of State
Room 6817
2201 C Street, N.W.
Washington, D.C. 20520

1 - Each Member of the I/LEC

ALLEGATIONS REVIEW SUBCOMMITTEE (ARS) POLICY AND PROCEDURES

1) Allegations when received will be reviewed by the Chairman of the ARS and those without criminal considerations will be presented to the ARS for action. Those with possible criminal involvement will be referred to the Public Integrity Section (PIS) of the Department of Justice (DOJ) for prosecutive determination. Those deemed prosecutable will be investigated by the appropriate investigative agency and the subcommittee advised of final judicial disposition. Those lacking prosecutive merit will be returned to the subcommittee for action.

2) Allegations alleging Inspector General (IG) and/or Deputy IG involvement with no indication of complicity by the agency head or his/her principal deputy will be referred to the agency head and the President's Council on Integrity and Efficiency (PCIE) Chairman for appropriate disposition to include further investigation and/or administrative action.

3) Allegations alleging IG and/or Deputy IG involvement with possible complicity by the agency head or his/her principal Deputy will be referred to the White House Counsel to the President and the PCIE Chairman for appropriate disposition to include further investigation and/or administrative action.

4) The ARS will not act upon allegations deemed by it to be frivolous or without merit.

5) The ARS, in certain situations, may act as a clearinghouse concerning manpower requests made by IGs for investigative assistance. These requests may be resolved through the detailing, on a reimbursable basis, of investigative resources among IGs.

6) Those allegations in which judicial action has been completed will be reviewed by the ARS and referred in accordance with the above-noted policy and procedures.

7) Allegations requiring additional information necessary for an ARS assessment of the facts will be forwarded to appropriate individuals with a request for such information. Upon receipt of this information, the ARS will act in conformity with the above policy and procedures.

8) Prior to final ARS disposition of an allegation, it will have been reviewed by permanent ARS members who represent the PIS, DOJ; Office of Government Ethics, Special Counsel to Merit Systems Protection Board; and the Office of Personnel Management.

DRAFT

END

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